

# **EXHIBIT 1**

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN BERNARDINO**

11 **(UNLIMITED JURISDICTION)**

12 MARGARITA PEREZ and MARIA DE LA  
13 LUNA HUERTA on behalf of themselves and all  
14 others similarly situated, and the general public,  
and as “Aggrieved Employees” on behalf of  
15 other “Aggrieved Employees” and the State of  
California under the Labor Code Private  
16 Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 WORKFORCE PERSONNEL, INC., a  
20 California corporation; DIAMOND WIPES  
INTERNATIONAL, INC., a California  
21 Corporation; and DOES 1–50, inclusive,

22 *Defendant(s).*  
23  
24  
25  
26  
27

Case No. CIVSB2220822

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

Action filed: September 19, 2022  
Dept: 17, The Honorable Joseph  
T. Ortiz

**ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)**

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INTERNATIONAL, INC.

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Maria De La Luna Huerta (“Plaintiff” or “Huerta”), individually and on behalf of the “Class” as defined herein, on the one hand, and defendant Diamond Wipes International, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

**1. DEFINITIONS.**

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Diamond Wipes International, Inc. captioned “MARGARITA PEREZ and MARIA DE LA LUNA HUERTA on behalf of themselves and all others similarly situated, and the general public, and as “Aggrieved Employees” on behalf of other “Aggrieved Employees” and the State of California under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. WORKFORCE PERSONNEL, INC., California Corporation; DIAMOND WIPES INTERNATIONAL, INC., California Corporation; and DOES 1–50, inclusive, *Defendant(s)*,” Case No. CIVSB2220822 initiated on September 19, 2022 and pending in Superior Court of the State of California, County of San Bernardino.

1.2. “Administrator” means Apex Class Action, the neutral entity the Parties have agreed to appoint to administer the Settlement.

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

1.4. “Aggrieved Employee” means an individual Defendant Diamond Wipes International, Inc. employed directly at its Chino location as an hourly, non-exempt employee during the PAGA Period.

1.5. “Class” means all individuals Defendant Diamond Wipes International, Inc. employed directly at its Chino location as hourly, non-exempt employees during the Class Period.

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

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

1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Work Weeks and PAGA Pay Periods.

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

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

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

1.12. “Class Period” means the period from July 25, 2019 to the date of preliminary approval of this Settlement, or the Alternate End Date (as defined in Paragraph 9 below), whichever is sooner.

1.13. “Class Representative” means Maria De La Luna Huerta, a named plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

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

1.15. “Court” means the Superior Court of California, County of San Bernardino.

1.16. “Defendant” means named Defendant Diamond Wipes International, Inc.

1.17. “Defense Counsel” means Alfred Landegger, Evelyn Zarraga, and Joseph P. Sklar of Landegger Verano, ALC.

1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed,

1 the day after the appellate court affirms the Judgment and issues a remittitur.

2 1.19. "Final Approval" means the Court's order granting final approval of the  
3 Settlement.

4 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final  
Approval of the Settlement.

5 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final  
6 Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

7 1.22. "Gross Settlement Amount" means \$595,079.40 which is the total amount  
8 Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below, and not  
9 including the employer payroll taxes owed on the Wage Portions of the Individual Class  
10 Payments. The Gross Settlement Amount will be used to pay Individual Class Payments,  
11 Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class  
12 Counsel Litigation Expenses Payment, Class Representative Service Payment and the  
Administration Expenses Payment. Defendant will pay its employer-side payroll taxes in addition  
13 to the Gross Settlement Amount.

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 Work Weeks worked  
during the Class Period.

16 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of  
17 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the  
18 PAGA Period.

19 1.25. "Judgment" means the judgment entered by the Court based upon the Final  
20 Approval.

21 1.26. "LWDA" means the California Labor and Workforce Development Agency, the  
agency entitled, under Labor Code section 2699, subd. (i).

22 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the  
23 LWDA under Labor Code section 2699, subd. (i).

24 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following  
25 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA  
26 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel  
27 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be

paid to Participating Class Members as Individual Class Payments.

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

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

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

1.32. “PAGA Period” means the period from September 7, 2021 to the date of preliminary approval of this Settlement, or the Alternate End Date (as defined in Paragraph 9 below), whichever is sooner.

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

1.34. “PAGA Notice” means Margarita Perez’s September 7, 2022 and Plaintiff Huerta’s June 22, 2025 letters to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a), collectively.

1.35. “PAGA Penalties” means the total amount of PAGA civil penalties (\$5,000.00) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,250.00) and the 75% to LWDA (\$3,750.00) in settlement of PAGA claims.

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

1.37. “Plaintiff” means Maria De La Luna Huerta, a named plaintiff in the Action.

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

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

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

1.41. “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.

1.42. “Released Parties” means: Defendant and each of its former and present officers,

1 directors, owners, attorneys, insurers, employees and agents. “Released Parties” does not include  
2 Workforce Personnel, Inc. or any of its officers, directors, employees or agents.

3 1.43. “Request for Exclusion” means a Class Member’s submission of a written request  
4 to be excluded from the Class Settlement signed by the Class Member. An Election Not to  
5 Participate in Settlement form is attached as Exhibit B.

6 1.44. “Response Deadline” means 60 days after the Administrator mails Notice to Class  
7 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)  
8 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or  
9 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having  
10 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond  
11 the Response Deadline has expired.

12 1.45. “Settlement” means the disposition of the Action effected by this Agreement and  
13 the Judgment.

14 1.46. “Work Week” means any week during which a Class Member worked for  
15 Defendant for at least one day, during the Class Period.

16 1.47. A Work Week Dispute form is attached as Exhibit C.

## 17 **2. RECITALS.**

18 2.1. On September 19, 2022, this Action was commenced by filing a Complaint  
19 alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful  
20 wage deductions, failure to provide meal periods, failure to authorize and permit rest periods,  
21 failure to issue proper wage statements, failure to indemnify for business expenses, failure to  
22 timely pay wages, and related claims. On November 14, 2025, a First Amended Complaint was  
23 filed adding Huerta as named plaintiff. The First Amended Complaint is the operative complaint in  
24 the Action (the “Operative Complaint”). Defendant denies the allegations in the Operative  
25 Complaint, denies any failure to comply with the laws identified in in the Operative Complaint  
26 and denies any and all liability for the causes of action alleged.

27 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Huerta and Plaintiff  
28 Perez gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

29 2.3. On March 19, 2025, the Parties, by and through their respective counsel of record,  
30 participated in an all-day mediation presided over by Steve Mehta, esq. which led to this  
31 Agreement to settle the Action.



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

2.5. The Court has not granted class certification.

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

### 3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$595,079.40 and no more as the Gross Settlement Amount and to separately pay Defendant's share of employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay any portion of the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the

Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one third of the Gross Settlement Amount which is currently estimated to be \$198,359.80 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendant 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 Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1. Tax Allocation of Individual Class Payments. 20.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage

Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Notwithstanding the treatment of the payments to each Participating Class Member, none of the payments called for by this Agreement, including the Wage Portions of the Individual Class Payments, are to be treated as earnings, wages, pay or compensation for the purpose of any applicable benefit or retirement plan, nor do any payments under this Agreement extend or alter Class Members’ or Aggrieved Employees’ period of employment for any purpose.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$5,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,750.00) allocated to the LWDA PAGA Payment and 25% (\$1,250.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties \$1,250.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. 100% of the PAGA Penalties are allocated as penalties and not as wages. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Class Work Weeks. Based on a review of its records, Defendant estimates that the Class Members collectively worked a total of 48,777 Work Weeks as of March 19, 2025 (i.e., as of the date the Parties participated in mediation).

1           4.2.     Class Data. Not later than 15 days after the Court grants Preliminary Approval  
2 of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in  
3 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the  
4 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes  
5 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator  
6 employees who need access to the Class Data to effect and perform under this Agreement.  
7 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class  
8 Data omitted class member identifying information and to provide corrected or updated Class  
9 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant  
10 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use  
11 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or  
12 omitted Class Data.

13           4.3.     Funding of Gross Settlement Amount. Defendant shall fully fund the Gross  
14 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll  
15 taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.  
16 Defendant's payment of the Gross Settlement Amount and Defendant's share of payroll taxes is  
17 contingent upon receipt of the Administrator's payment instructions. Defendant's payment  
18 obligations with respect to the Gross Settlement Amount and Defendant's share of payroll taxes  
19 shall be met upon initiating the electronic transfer of funds in the amounts provided for in this  
20 Settlement Agreement pursuant to the Settlement Administrator's instructions. In the event of an  
21 unsuccessful electronic transfer of funds, the Parties agree to cooperate in good faith to resolve the  
22 issues.

23           4.4.     Payments from the Gross Settlement Amount. Within 14 days after Defendant  
24 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class  
25 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration  
26 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses  
27 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees  
28 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service  
Payment shall not precede disbursement of Individual Class Payments and Individual PAGA  
Payments. The Settlement Administrator shall also set aside the employer taxes and all employee-  
side payroll taxes, contributions, and withholdings, and timely forward these to the appropriate

government authorities.

4.4.1. 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.

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

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

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

## **5. [OMITTED]**

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

5 6.1 Plaintiff's Release. In addition to the Released Class Claims and Released PAGA  
 6 Claims described below, Plaintiff, individually and on behalf of her respective former and present  
 7 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns  
 8 generally, release and discharge Released Parties from all claims, transactions, occurrences,  
 9 demands, rights, liabilities and causes of action of every nature and description whatsoever,  
 10 whether known or unknown, asserted or that might have been asserted, whether in tort, contract,  
 11 or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or  
 12 in connection with any act or omission of the Released Parties through the date of full execution  
 13 of this Settlement Agreement ("Plaintiff's Release"). Plaintiff's Release does not extend to any  
 14 claims or actions to enforce this Agreement, or to those rights that as a matter of law cannot be  
 15 waived, including but not limited to, any claims for vested benefits, unemployment benefits,  
 16 disability benefits, social security benefits, workers' compensation benefits that arose at any time.  
 17 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,  
 18 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that  
 19 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or  
 20 additional facts or Plaintiff's discovery of them. This release does not apply to Defendant  
 21 Workforce Personnel, Inc., or any of its officers, directors, employees or agents.

22 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For  
 23 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,  
 24 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

29 6.2 Release by Participating Class Members: All Participating Class Members, on  
 30 behalf of themselves and their respective former and present representatives, agents, attorneys,

1 heirs, administrators, successors, and assigns, release Released Parties from all claims that were  
2 alleged, or reasonably could have been alleged, based on facts set forth in the Operative  
3 Complaint that arose during the Class Period including, e.g., claims for: (a) failure to pay all  
4 wages earned for all hours worked and other compensable hours at the correct rates of pay,  
5 including for off-the-clock work, hours improperly deducted, minimum wages, regular wages,  
6 overtime wages, and doubletime wages; (b) failure to provide rest breaks or compensation in lieu  
7 thereof; (c) failure to provide compliant meal periods or compensation in lieu thereof; (d) failure  
8 to reimburse for necessary business-related expenses; (e) failure to provide accurate and complete  
9 itemized wage statements and maintain payroll records; (f) failure to timely pay all wages due  
10 during employment and upon separation of employment; and (g) claims for unfair competition.  
11 (“Released Class Claims”). Except for Plaintiff’s Release by Plaintiff and as set forth in Section  
12 6.3 of this Agreement, Participating Class Members do not release any other claims, including  
13 claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing  
14 Act, unemployment insurance, disability, social security, workers’ compensation, or claims based  
15 on facts occurring outside the Class Period. This release does not apply to Defendant Workforce  
16 Personnel, Inc., or any of its officers, directors, employees or agents.

15       6.3       Release of PAGA Claim by Aggrieved Employees. All Aggrieved Employees  
16 are deemed to release, on behalf of themselves and their respective former and present  
17 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released  
18 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been  
19 alleged, based on the facts set forth in the Operative Complaint and the PAGA Notice that arose  
20 during the PAGA Period including, e.g., claims for: (a) failure to pay all wages earned for all  
21 hours worked and other compensable hours at the correct rates of pay, including for off-the-clock  
22 work, hours improperly deducted, minimum wages, regular wages, overtime wages, and  
23 doubletime wages; (b) failure to provide compliant rest breaks or compensation in lieu thereof;  
24 (c) failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to  
25 reimburse for necessary business-related expenses; (e) failure to provide accurate and complete  
26 itemized wage statements and maintain payroll records; (f) failure to timely pay all wages due  
27 during employment and upon separation of employment; and (g) claims for unfair competition.  
28 (“Released PAGA Claims”). The foregoing release shall be binding on Plaintiff, the Aggrieved  
Employees, and the State of California, and shall bar by res judicata any claim under the PAGA

brought by any person, including the Aggrieved Employees, on behalf of the State of California, as to any claims predicated on the Released PAGA Claims. Aggrieved Employees do not release claims for wages or damages unless such Aggrieved Employee is a Participating Class Member. This release does not apply to Defendant Workforce Personnel, Inc., or any of its officers, directors, employees or agents.

**7. MOTION FOR PRELIMINARY APPROVAL.** Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”). A Preliminary Approval Order form is attached as Exhibit E.

7.1 Defendant’s Representations. Defense Counsel and Defendant represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. Defendant and Defense Counsel are not aware of any potential conflicts of interest with the Administrator. Defendant further represents that, based on its records and available information, Spanish and Mandarin are the only non-English languages necessary to ensure that the Class Notice provides adequate notice to Class Members.

7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel, Defendant 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; and (vi) 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. (l)(1)), this Agreement



(Labor Code section 2699, subd. (l)(2)). In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.3 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.

## **8. SETTLEMENT ADMINISTRATION.**

8.1 Selection of Administrator. The Parties have jointly selected Apex Class Action to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses, including without limitation, calculating the Individual Class Payments to be issued to Participating Class Members, Individual PAGA Payment to be issued to Aggrieved Employees, sending notices and translating same to Spanish and Mandarin, preparing all checks and mailings, establishing a qualified settlement fund and holding the various payments from Defendants comprising the Gross Settlement Amount and employer payroll taxes. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Tax Reporting & Employer Identification Number. The Administrator will be

1 responsible for calculating the applicable taxes and withholdings, including Defendant's  
2 employer payroll taxes owed, on the Individual Class Payments, and for paying the taxes and  
3 withholdings to the applicable taxing or governmental authorities with the necessary reports, and  
4 submitting copies to Defense Counsel. The Administrator shall issue to Participating Class  
5 Members IRS Forms W-2 for the Wage Portions of the Individual Class Payments, IRS Forms  
6 1099 for the Non-Wage Portions, and IRS Forms 1099 to Aggrieved Employees for Individual  
7 PAGA Payments, as described in this Agreement. The Administrator shall have and use its own  
8 Employer Identification Number for purposes of calculating payroll tax withholdings and  
providing reports state and federal tax authorities.

9 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund  
10 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury  
Regulation section 468B-1.

11 8.4 Notice to Class Members.

12 8.4.1 No later than three (3) business days after receipt of the Class Data, the  
13 Administrator shall notify Class Counsel that the list has been received and state the number of  
14 Class Members, Aggrieved Employees, Work Weeks, and Pay Periods in the Class Data.

15 8.4.2 Using best efforts to perform as soon as possible, and in no event later than  
16 14 days after receiving the Class Data, the Administrator will send to all Class Members identified  
17 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet  
18 with Spanish translation, substantially in the forms attached to this Agreement as **Exhibits A, B,**  
19 **C, and D.** The first page of the Class Notice shall prominently estimate the dollar amounts of any  
20 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the  
21 number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these amounts.  
Before mailing Notice Packets, the Administrator shall update Class Member addresses using the  
22 National Change of Address database.

23 8.4.3 Not later than three (3) business days after the Administrator's receipt of  
24 any Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice  
25 Packet using any forwarding address provided by the USPS. If the USPS does not provide a  
26 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail  
27 the Notice Packet to the most current address obtained. The Administrator has no obligation to  
make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is

1 returned by the USPS a second time.

2 8.4.4 The deadlines for Class Members' written objections, Challenges to Work  
3 Weeks and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an  
4 additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class  
5 Members whose notice is re-mailed. The Administrator will inform the Class Member of the  
6 extended deadline with the re-mailed Notice Packet.

7 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or  
8 otherwise discovers any persons who believe they should have been included in the Class Data  
9 and should have received Notice Packet, the Parties will expeditiously meet and confer in person  
10 or by telephone, and in good faith. in an effort to agree on whether to include them as Class  
11 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as  
12 other Class Members, and the Administrator will send, via email or overnight delivery, a Class  
13 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt  
14 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

15 8.5 Requests for Exclusion (Opt-Outs).

16 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class  
17 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for  
18 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an  
19 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for  
20 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates  
21 the Class Member's election to be excluded from the Settlement and includes the Class Member's  
22 name, address and email address or telephone number. To be valid, a Request for Exclusion must  
23 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate  
24 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

25 8.5.2 The Administrator may not reject a Request for Exclusion as invalid  
26 because it fails to contain all the information specified in the Class Notice. The Administrator  
27 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the  
28 identity of the person as a Class Member and the Class Member's desire to be excluded. The  
Administrator's determination shall be final and not appealable or otherwise susceptible to  
challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,  
the Administrator may demand additional proof of the Class Member's identity. The

1 Administrator's determination of authenticity shall be final and not appealable or otherwise  
2 susceptible to challenge.

3 8.5.3 Every Class Member who does not submit a timely and valid Request for  
4 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all  
5 benefits and bound by all terms and conditions of the Settlement, including the Participating Class  
6 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the  
7 Participating Class Member actually receives the Class Notice or objects to the Settlement.

8 8.5.4 Every Class Member who submits a valid and timely Request for  
9 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment  
10 or have the right to object to the class action components of the Settlement. Because future PAGA  
11 claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class  
12 Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph  
13 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

14 8.6 Challenges to Calculation of Work Weeks or PAGA Pay Periods. Each Class  
15 Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional  
16 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class  
17 Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.  
18 This is also known as a dispute. A Work Week Dispute form, attached as Exhibit C, may be  
19 used for this purpose but is not required. The Class Member may challenge the allocation by  
20 communicating with the Administrator via fax, email or mail. The Administrator must encourage  
21 the challenging Class Member to submit supporting documentation. In the absence of any  
22 contrary documentation, the Administrator is entitled to presume that the Work Weeks contained  
23 in the Class Notice are correct so long as they are consistent with the Class Data. The  
24 Administrator's determination of each Class Member's allocation of Work Weeks and/or PAGA  
25 Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The  
26 Administrator shall promptly provide copies of all challenges to calculation of Work Weeks  
27 and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's  
28 determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action  
components of the Settlement and/or this Agreement, including contesting the fairness of the

1 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel  
2 Litigation Expenses Payment and/or Class Representative Service Payment.

3 8.7.2 Participating Class Members may send written objections to the  
4 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear  
5 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval  
6 Hearing. A Participating Class Member who elects to send a written objection to the  
7 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice  
8 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An  
9 The Objection form attached as Exhibit D may be used for this purpose but is not required.

10 8.7.3 Non-Participating Class Members have no right to object to any of the class  
11 action components of the Settlement.

12 8.8 Administrator Duties. The Administrator has a duty to perform or observe all  
13 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

14 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will  
15 establish and maintain and use an internet website to post information of interest to Class  
16 Members including the date, time and location for the Final Approval Hearing and copies of the  
17 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice  
18 Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class  
19 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final  
20 Approval and the Judgment. The Administrator will also maintain and monitor an email address  
21 and a toll-free telephone number to receive Class Member calls, faxes and emails.

22 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator  
23 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not  
24 later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion,  
25 the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the  
26 names and other identifying information of Class Members who have timely submitted valid  
27 Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of  
28 Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for  
Exclusion from Settlement submitted (whether valid or invalid).

8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide  
written reports to Class Counsel and Defense Counsel that, among other things, tally the number

1 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for  
2 Exclusion (whether valid or invalid) received, objections received, challenges to Work Weeks  
3 and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class  
4 Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include  
5 provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies  
6 of all Requests for Exclusion and objections received.

6 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the  
7 authority to address and make final decisions consistent with the terms of this Agreement on all  
8 Class Member challenges over the calculation of Work Weeks and/or Pay Periods. The  
9 Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

10 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by  
11 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the  
12 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable  
13 for filing in Court attesting to its due diligence and compliance with all of its obligations under  
14 this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets  
15 returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the  
16 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the  
17 number of written objections and attach the Exclusion List. The Administrator will supplement  
18 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible  
19 for filing the Administrator’s declaration(s) in Court.

18 8.8.6 Final Report by Administrator. Within 10 days after the Administrator  
19 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel  
20 and Defense Counsel with a final report detailing its disbursements by employee identification  
21 number only of all payments made under this Agreement. At least 15 days before any deadline  
22 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense  
23 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all  
24 payments required under this Agreement. Class Counsel is responsible for filing the  
25 Administrator’s declaration in Court.

26 **9. WORK WEEK ESTIMATES and ESCALATOR CLAUSE.** Based on its records,  
27 Defendant estimates that, as of the date of this Settlement Agreement, there are 48,777 Total

1 Work Weeks as of March 19, 2025 (i.e., as of the date the Parties participated in mediation). If  
2 the number of Work Weeks as of the date the Court approves the settlement exceeds the  
3 referenced 48,777 Work Weeks by more than 10.00%, the Gross Settlement Amount, including  
4 the Class Counsel Fees Payment, the Class Representative Service Payment, and the LWDA  
5 payment, will increase proportionally according to the number of additional Work Weeks. In the  
6 alternative, Defendant may elect to end the Class Period and PAGA Period on an earlier date at  
7 the Defendant's discretion in order to limit the covered Work Weeks to no more than 110% of  
8 Defendant's estimates ("Alternate End Date"). Defendant and Defense Counsel shall cooperate  
9 with Class Counsel in timely providing information prior to the Preliminary Approval hearing  
10 regarding whether the escalator clause has been triggered and, if applicable, whether Defendant  
11 is electing to shorten the Class Period and PAGA Period pursuant to this paragraph.

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

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

11.1 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 five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or  
3 accepted by the Court.

4 11.2 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 11.3 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 11.4 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 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 11.5 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  
material modification of this Agreement (including, but not limited to, the scope of release to be  
granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless  
expeditiously work together in good faith to address the appellate court's concerns and to obtain



1 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration  
2 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify  
3 the Court's award of the Class Representative Service Payment or any payments to Class Counsel  
4 shall not constitute a material modification of the Judgment within the meaning of this paragraph,  
5 as long as the Gross Settlement Amount remains unchanged.

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

9  
10 **13. ADDITIONAL PROVISIONS.**

11 13.1 No Admission of Liability, Class Certification or Representative Manageability  
12 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed  
13 claims. Nothing in this Agreement is intended or should be construed as an admission by  
14 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant  
15 has any liability for any claims asserted; nor should it be intended or construed as an admission  
16 by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class  
17 certification and representative treatment is for purposes of this Settlement only. If, for any reason  
18 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant  
19 reserves the right to contest certification of any class for any reasons, and Defendant reserves all  
20 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class  
21 certification on any grounds available and to contest Defendant's defenses. The Settlement, this  
22 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be  
23 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the  
24 Settlement and this Agreement).

25 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,  
26 Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval  
27 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or  
28 cause or permit another person to disclose, disseminate or publicize, any of the terms of the  
Agreement directly or indirectly, specifically or generally, to any person, corporation, association,  
government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,

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

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

13 13.3 No Solicitation. The Parties separately agree that they and their respective  
14 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,  
15 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class  
16 Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical  
17 obligations owed to Class Members.

18 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this  
19 Agreement together with its attached exhibits shall constitute the entire agreement between the  
20 Parties relating to the Settlement, superseding any and all oral representations, warranties,  
21 covenants, or inducements made to or by any Party.

22 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant  
23 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all  
24 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement  
25 to effectuate its terms, and to execute any other documents reasonably required to effectuate the  
26 terms of this Agreement including any amendments to this Agreement.

27 13.6 Cooperation. The Parties and their counsel will cooperate with each other and  
28 use their best efforts, in good faith, to implement the Settlement by, among other things,  
modifying the Settlement Agreement, submitting supplemental evidence and supplementing  
points and authorities as requested by the Court. In the event the Parties are unable to agree upon  
the form or content of any document necessary to implement the Settlement, or on any

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

3 13.7 No Prior Assignments. The Parties separately represent and warrant that they  
4 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,  
5 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of  
6 action, or right released and discharged by the Party in this Settlement.

7 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense  
8 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this  
9 Settlement be relied upon as such within the meaning of United States Treasury Department  
10 Circular 230 (31 CFR Part 10, as amended) or otherwise.

11 13.9 Modification of Agreement. This Agreement, and all parts of it, may be  
12 amended, modified, changed, or waived only by an express written instrument signed by all  
13 Parties or their representatives, and approved by the Court.

14 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and  
15 inure to the benefit of, the successors of each of the Parties.

16 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will  
17 be governed by and interpreted according to the internal laws of the state of California, without  
18 regard to conflict of law principles.

19 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and  
20 preparation of this Agreement. This Agreement will not be construed against any Party on the  
21 basis that the Party was the drafter or participated in the drafting.

22 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders  
23 entered during Action and in this Agreement relating to the confidentiality of information shall  
24 survive the execution of this Agreement.

25 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant  
26 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class  
27 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in  
28 connection with the Settlement, may be used only with respect to this Settlement, and no other  
purpose, and may not be used in any way that violates any existing contractual agreement, statute,  
or rule of court. Not later than 90 days after the date when the Court discharges the  
Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement

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

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

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

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

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

To Defendant:  
Alfred Landegger, Esq.  
Evelyn Zarraga, Esq.  
Joseph P. Sklar, Esq.  
LANDEGGER VERANO, ALC  
15760 Ventura Boulevard, Suite 1200  
Encino, California 91436  
[alfred@landeggeresq.com](mailto:alfred@landeggeresq.com)  
[evelyn@landeggeresq.com](mailto:evelyn@landeggeresq.com)  
[joseph@landeggeresq.com](mailto:joseph@landeggeresq.com)

13.18 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

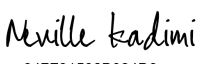
deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 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: \_\_\_\_\_, 2025

By: \_\_\_\_\_  
MARIA DE LA LUNA HUERTA

Dated: 11/18/2025, 2025

Signed by:  
  
947F31592B024D3...  
By: \_\_\_\_\_  
NEVILLE KADIMI  
Chief Financial Officer  
Diamond Wipes International, Inc.

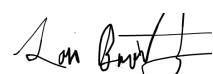
THE SPIVAK LAW FIRM

Dated: 03 / 09 / 2026, 2025

By:   
DAVID GLENN SPIVAK, Attorneys  
for Plaintiff, MARIA DE LA LUNA  
HUERTA, and all others similarly  
situated

BENOWITZ LAW CORPORATION

Dated: 03 / 09 / 2026, 2025

By:   
LOUIS M. BENOWITZ, Attorneys for  
Plaintiff, MARIA DE LA LUNA  
HUERTA, and all others similarly  
situated

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LANDEGGER VERANO & DAVIS, ALC



Dated: November 18, 2025

By: \_\_\_\_\_

ALFRED J. LANDEGGER  
JOSEPH P. SKLAR,  
Attorneys for Defendant  
DIAMOND WIPES  
INTERNATIONAL, INC.

**EXHIBIT A**

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

(case name: *Margarita Perez, et al. v. Workforce Personnel, Inc.* and number CIVSB2220822)

***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 Diamond Wipes International, Inc. (“Defendant”) for alleged violations of California’s labor laws. The Action was filed by one of former employees of Defendant. Maria De La Luna Huerta (“Plaintiff” or “Huerta”) later joined the Action as a named-plaintiff. It seeks payment of (1) wages and other relief for a class of all individuals Defendant Diamond Wipes International, Inc. employed directly at its Chino location as hourly, non-exempt employees during the Class Period of July 25, 2019 to \_\_\_\_\_ <<the date of preliminary approval of this Settlement or the Alternate End Date>> (“Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all individuals Defendant Diamond Wipes International, Inc. employed directly at its Chino location as hourly, non-exempt employees during the PAGA Period of September 7, 2021 to \_\_\_\_\_ <<the date of preliminary approval of this Settlement or the Alternate End Date>> (“Aggrieved Employees”).

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Work Week is <<\$increment type value>> and a PAGA 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 Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period. The individual payment 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 an Aggrieved Employee 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 an Aggrieved Employee is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

The above estimates are based on Defendant’s records showing that **you worked <<\_\_>> Work Weeks** during the Class Period and **you worked <<\_\_>> Pay Periods** during



1 the PAGA Period. If you believe that you worked more Work Weeks or Pay Periods during either  
2 period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

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

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

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

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

**SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|                                                                       |                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Don’t Have to Do Anything to Participate in the Settlement</b> | 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 Defendant that are covered by this Settlement (Released Claims). |
|-----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b></p> <p><b>The Opt-out Deadline is &lt;&lt;RESPONSE DEADLINE&gt;&gt;</b></p>                                        | <p>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.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).</p> |
| <p><b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b></p> <p><b>Written Objections Must be Submitted by &lt;&lt;RESPONSE DEADLINE&gt;&gt;</b></p> | <p>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.</p>                           |
| <p><b>You Can Participate in the &lt;&lt;FinalApprovalHearingDate&gt;&gt; Final Approval Hearing</b></p>                                                                                         | <p>The Court's Final Approval Hearing is scheduled to take place on &lt;&lt;FinalApprovalHearingDate&gt;&gt;. 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.</p>                                                                                                                                                                                                                                                           |
| <p><b>You Can Challenge the Calculation of Your Work Week / Pay Periods</b></p> <p><b>Written Challenges Must be Submitted by &lt;&lt;RESPONSE DEADLINE&gt;&gt;</b></p>                          | <p>The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Work Weeks 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 Work Weeks and number of PAGA Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by &lt;&lt;RESPONSE DEADLINE&gt;&gt;. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.</p>                                                                                                                                          |

**1. WHAT IS THE ACTION ABOUT?**

Huerta is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to indemnify for business expenses, 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 Louis M. Benowitz of Benowitz Law Corporation ("Class Counsel.")

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether Defendant violated any laws or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an 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 Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has 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 whether to grant Final Approval of the Settlement.

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

A. Gross Settlement Amount. Defendant Will Pay \$595,079.40 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become

1 final. The Judgment will be final on the date the Court enters Judgment, or a later date if  
2 Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

7 1. Attorney Fees and Costs. Up to \$198,359.80 (1/3 of the Gross Settlement  
8 Amount) to Class Counsel for attorneys' fees and up to \$15,000.00 for their litigation expenses.  
9 To date, Class Counsel have worked and incurred expenses on the Action without payment.

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

14 3. Administration Expenses. Up to \$10,000.00 to the Administrator for  
15 services administering the Settlement.

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

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

21 Based on its records, Defendant estimated that, as of March 19, 2025 (i.e., as of the date  
22 the Parties participated in mediation), there were 48,777 total Work Weeks during the Class  
23 period. If the Work Weeks as of the date the Court approves the Settlement exceeds the referenced  
24 48,777 Work Weeks by more than 10.00%, the Gross Settlement Amount, including the Class  
25 Counsel Fees Payment, the Class Representative Service Payment, and the LWDA payment,  
26 would increase proportionally according to the number of additional Work Weeks. In the  
27 alternative, Defendant had the option to elect to end the Class Period and PAGA period on an  
28 earlier date at its discretion in order to limit the covered Work Weeks to no more than the 110%  
of Defendant's estimates. According to Defendant's records, the number of additional Work  
Weeks or Class Members <<did or did not>> exceed Defendant's estimates by more than 10%.  
Based thereon, Defendant has elected <<an Alternate End Date of \_\_\_\_\_ or \_\_\_\_\_, the date  
the Court approved the settlement>> as the Class Period and PAGA Period end date, <<which  
does or which does not>> result in an increase to the Gross Settlement Amount.

C. Net Settlement Distributed to Class Members. After making the above deductions  
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  
Members based on their Class Period Work Weeks.

1           D.     Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking  
 2 the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages  
 3 (“Wage Portion”) and 66.67% to interest and penalties (“Non-Wage Portion.”). The Wage Portion  
 4 is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay  
 5 employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted  
 6 as penalties rather than wages for tax purposes. The Administrator will report the Individual  
 7 PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099  
 8 Forms.

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

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

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

22           F.     Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated  
 23 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the  
 24 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.  
 25 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request  
 26 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for  
 27 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class  
 28 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  
 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  
 pursue claims against Defendant for violations of California’s labor laws.

          You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude  
 themselves from the Class Settlement (Non-Participating Class Members) who are Aggrieved  
 Employees remain eligible for Individual PAGA Payments and are required to give up their right  
 to assert PAGA claims against Defendants based on the PAGA claims alleged in the Action.

          G.     The Proposed Settlement Will be Void if the Court Denies Final Approval. It is  
 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

1 and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not  
2 pay any money and Class Members will not release any claims against Defendant.

3 H. Administrator. The Court has appointed a neutral company, Apex Class Action  
4 (the “Administrator”) to send this Notice, calculate and make payments, and process Class  
5 Members’ Requests for Exclusion. The Administrator will also decide Class Member disputes  
6 over Work Weeks, mail and re-mail settlement checks and tax forms, and perform other tasks  
7 necessary to administer the Settlement. The Administrator’s contact information is contained in  
8 Section 9 of this Notice.

9 I. Participating Class Members’ Release. After the Judgment is final and Defendant  
10 has fully funded the Gross Settlement (and separately paid all employer payroll taxes),  
11 Participating Class Members will be legally barred from asserting any of the claims released under  
12 the Settlement. This means that unless you opted out by validly excluding yourself from the Class  
13 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or  
14 its officers, directors, owners, attorneys, insurers, employees, and agents for wages based on the  
15 Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and  
16 resolved by this Settlement.

17 The Participating Class Members will be bound by the release of the following  
18 “Released Class Claims”:

19 Release by Participating Class Members: All Participating Class Members,  
20 on behalf of themselves and their respective former and present representatives,  
21 agents, attorneys, heirs, administrators, successors, and assigns, release Released  
22 Parties from all claims that were alleged, or reasonably could have been alleged,  
23 based on facts set forth in the Operative Complaint that arose during the Class  
24 Period including, e.g., claims for: (a) failure to pay all wages earned for all hours  
25 worked and other compensable hours at the correct rates of pay, including for off-  
26 the-clock work, hours improperly deducted, minimum wages, regular wages,  
27 overtime wages, and doubletime wages; (b) failure to provide rest breaks or  
28 compensation in lieu thereof; (c) failure to provide compliant meal periods or  
compensation in lieu thereof; (d) failure to reimburse for necessary business-  
related expenses; (e) failure to provide accurate and complete itemized wage  
statements and maintain payroll records; (f) failure to timely pay all wages due  
during employment and upon separation of employment; and (g) claims for unfair  
competition. (“Released Class Claims”). Except for Plaintiff’s Release by Plaintiff  
and 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. This release does not apply to Defendant  
Workforce Personnel, Inc., or any of its officers, directors, employees or agents.

The “Released Parties” means: Defendant and each of its former and present  
officers, directors, owners, attorneys, insurers, employees and agents

J. The PAGA Release. After the Court’s judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting any of the “Released PAGA Claims” against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against the Release Parties based on the PAGA claims alleged in the Action and resolved by this Settlement.

The Aggrieved Employees will be bound by the release of the following “Released PAGA Claims”:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts set forth in the Operative Complaint and the PAGA Notice that arose during the PAGA Period including, e.g., claims for: (a) failure to pay all wages earned for all hours worked and other compensable hours at the correct rates of pay, including for off-the-clock work, hours improperly deducted, minimum wages, regular wages, overtime wages, and doubletime wages; (b) failure to provide compliant rest breaks or compensation in lieu thereof; (c) failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to reimburse for necessary business-related expenses; (e) failure to provide accurate and complete itemized wage statements and maintain payroll records; (f) failure to timely pay all wages due during employment and upon separation of employment; and (g) claims for unfair competition. (“Released PAGA Claims”). The foregoing release shall be binding on Plaintiff, the Aggrieved Employees, and the State of California, and shall bar by res judicata any claim under the PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of California, as to any claims predicated on the Released PAGA Claims. Aggrieved Employees do not release claims for wages or damages unless such Aggrieved Employee is a Participating Class Member. This release does not apply to Defendant Workforce Personnel, Inc., or any of its officers, directors, employees or agents.

#### 4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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

B. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$1,250.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual Aggrieved Employee.

C. Workweek/Pay Period Challenges. The number of Class Work Weeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until <<RESPONSE DEADLINE>> to challenge the number of Work Weeks and/or PAGA Pay Periods 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.

You need to support your challenge by submitting copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Work Weeks and/or PAGA Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Work Week and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's 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 *Margarita Perez, et al. vs. Workforce Personnel, Inc.*, Case No. CIVSB2220822, 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 Defendant are asking the Court to approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Class Representative Service Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's website <<COURT WEBSITE>>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Class Representative Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Margarita Perez vs. Workforce Personnel, Inc.*, case no. CIVSB2220822, and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information. You may use the enclosed Objection form for this purpose. You should send your objection to the Administrator by email, fax, or send by regular U.S. mail.

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

## 8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department 17 of the San Bernardino Superior Court, located at San Bernardino District – Civil Division, 247 West Third Street, Dept. S17, San Bernardino, CA 92415-0210. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>

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

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

## 9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. CIVSB2220822 . You can also make an appointment to personally review court documents in the Clerk's Office at the San Bernardino District – Civil Division by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

### Class Counsel:

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

### Administrator:

|                  |                   |
|------------------|-------------------|
| Name of Company: | Apex Class Action |
| Email Address:   | _____             |
| Mailing Address: | _____             |
| Telephone:       | _____             |
| Fax Number:      | _____             |

## 10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

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

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

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

*Margarita Perez, et al. v. Workforce Personnel, Inc., et al.*  
**Superior Court of the State of California, County of San Bernardino**  
Case No. CIVSB2220822

**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>>:**

*Margarita Perez, et al. v. Workforce Personnel, Inc.* Class Action Administrator  
c/o \_\_\_\_

\_\_\_\_  
\_\_\_\_

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be excluded from the class and ***not*** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds. I understand that exclusion from the Class Settlement will not result in exclusion from the PAGA portion of the Settlement. If I am 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 \_\_\_\_.

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**EXHIBIT C**

**WORK WEEK/PAGA PAY PERIOD DISPUTE FORM**

Superior Court of The State of California  
 For The County of San Bernardino  
*Margarita Perez, et al. v. Workforce Personnel, Inc., Case No. CIVSB2220822*

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

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

XX – XX -

The amount of your estimated Settlement Award is based upon the number of eligible Work Weeks you worked between July 25, 2019 and <<the date the Court preliminarily approves this class action settlement or the Alternate End Date>> and eligible PAGA Pay Periods you worked between September 7, 2021 and <<the date the Court preliminarily approves this class action settlement or the Alternate End Date>>. “Work Week” means any week during which a Class Member worked for Defendant or any other Released Party for at least one day, during the Class Period. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant or any other Released Party for at least one day during the PAGA Period. The number of Work Weeks and PAGA Pay Periods applicable to your claim are set forth below.

**YOUR ELIGIBLE WORK WEEKS/ PAGA PAY PERIODS**

Defendant’s records indicate that you worked <<number of Workweeks>> Workweeks between July 25, 2019 and <<the date the Court preliminarily approves this class action settlement or the Alternate End Date>> and <<number of PAGA Pay Periods>> PAGA Pay Periods between September 7, 2021 through <<the date the Court preliminarily approves this class action settlement or the Alternate End Date>>.

**YOUR ESTIMATED SETTLEMENT AWARDS 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 Work Weeks of PAGA Pay Periods 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 a postmark or delivery service date stamp). You may use this Work Weeks/PAGA Pay Periods Dispute form for this purpose. You must also send any



documents or other information that you contend supports your belief that the information set forth above is incorrect. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve any dispute based upon Defendant's records and any information you provide. Please be advised that the information on this Work Weeks/PAGA Pay Periods Dispute Form is presumed to be correct unless the documents you submit are company records from Defendant.

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

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**EXHIBIT D**

**OBJECTION FORM**

***Margarita Perez, et al. v. Workforce Personnel, Inc., et al.***  
**Superior Court of the State California, County of San Bernardino**  
**Case No. CIVSB2220822**

Please verify and/or complete any missing identifying information:

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

CORRECT NAME AND ADDRESS HERE:

\_\_\_\_\_  
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 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 *Margarita Perez, et al. v. Workforce Personnel, Inc., et al.* Settlement on the following grounds (if additional space necessary, please include additional sheets of paper):

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

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Executed on \_\_\_\_\_, 2025  
(Signature)  
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<<Name>>  
(Printed Name)

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>>:

*Margarita Perez, et al.* v. *Workforce Personnel, Inc., et al.* Administrator  
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**EXHIBIT E**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN BERNARDINO**  
**(UNLIMITED JURISDICTION)**

MARGARITA PEREZ and MARIA DE LA LUNA HUERTA on behalf of themselves and all others similarly situated, and the general public, and as “Aggrieved Employees” on behalf of other “Aggrieved Employees” and the State of California under the Labor Code Private Attorneys General Act of 2004,

*Plaintiff(s),*

vs.

WORKFORCE PERSONNEL, INC., California Corporation; DIAMOND WIPES INTERNATIONAL, INC., California Corporation; and DOES 1–50, inclusive,

*Defendant(s).*

Case No. CIVSB2220822

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

Action filed: September 19, 2022  
Dept: 17, The Honorable Joseph T. Ortiz

The Motion of Plaintiff Maria De La Luna Huerta (hereafter referred to as “Plaintiff” or “Huerta”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Joseph T. Ortiz presiding. The Court having considered the Motion, the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement

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

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

2. For purposes of this Preliminary Approval Order, the “Settlement Class” means all individuals Defendant Diamond Wipes International, Inc. (“Defendant”) employed directly at its Chino location as hourly, non-exempt employees during the Class Period (collectively “Class Members”). The “Class Period” shall mean the period of time from July 25, 2019, through the date of preliminary approval of this Settlement or the Alternate End Date.

3. Based on its records, Defendant estimates that, as of March 19, 2025, the date the Parties participated in mediation, there were 48,777 Total Work Weeks during the Class period. If the number of Work Weeks as of the date the Court approves the settlement exceeds the estimated 48,777 Work Weeks by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment would increase proportionally according to the number of additional Work Weeks. In the alternative, Defendant had the option to elect to end the Class Period and PAGA period on an earlier date at its discretion in order to limit the covered Work Weeks to no more than the 110% of Defendant’s estimates. According to Defendant’s records, the number of additional Work Weeks [did or did not] exceed Defendant’s estimates by more than 10%. Based thereon, Defendant has elected [an Alternate End Date of \_\_\_\_\_ or \_\_\_\_\_, the date the Court approved the settlement] as the Class Period and PAGA Period end date, [which does or which does not] result in an increase to the Gross Settlement Amount.

1           4.       “Effective Date” means the date by when both of the following have occurred: (a)  
2 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the  
3 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no  
4 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if  
5 one or more Participating Class Members objects to the Settlement, the day after the deadline for  
6 filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed,  
7 the day after the appellate court affirms the Judgment and issues a remittitur.

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

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

23          7.       No later than three (3) business days after receipt of the Class Data, the  
24 Administrator shall notify Class Counsel that the list has been received and state the number of  
25 Class Members, Aggrieved Employees, Work Weeks, and PAGA Pay Periods in the Class Data.

26          8.       Using best efforts to perform as soon as possible, and in no event later than 14  
27 days after receiving the Class Data, the Administrator will send to all Class Members identified



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

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

15 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law  
16 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s  
17 contact information is Alfred Landegger, Evelyn Zarraga, and Joseph P. Sklar of Landegger  
18 Verano & Davis, ALC, 15760 Ventura Boulevard, Suite 1200, Encino, California 91436.

19 11. The deadlines for Class Members’ written objections, Challenges to Work Weeks  
20 and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an additional  
21 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose  
22 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline  
23 with the re-mailed Notice Packet.

24 12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise  
25 discovers any persons who believe they should have been included in the Class Data and should  
26 have received Notice Packet, the Parties will expeditiously meet and confer in person or by  
27 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.

1 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class  
2 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet  
3 requiring them to exercise options under the Settlement Agreement not later than 14 days after  
4 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

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

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

24 15. Every Class Member who does not submit a timely and valid Request for Exclusion  
25 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all  
26 benefits and bound by all terms and conditions of the Settlement, including the Participating Class  
27 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the

1 Participating Class Member actually receives the Class Notice or objects to the Settlement.

2 16. Every Class Member who submits a valid and timely Request for Exclusion is a  
3 Non-Participating Class Member and shall not receive an Individual Class Payment or have the  
4 right to object to the class action components of the Settlement. However, all Aggrieved  
5 Employees, including those that are Non-Participating Class Members, will be deemed to release  
6 all claims for civil penalties that could have been sought by the Labor Commissioner for the  
7 violations identified in Plaintiff's pre-filing letter to the LWDA, including the Released PAGA  
8 Claims under Paragraph 6.3 of the Settlement; Aggrieved Employees do not release claims for  
9 wages or damages unless such Aggrieved Employee is a Participating Class Member.

10 17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days  
11 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members  
12 whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and/or PAGA  
13 Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a  
14 dispute. A Work Week Dispute form, attached as Exhibit C to the Settlement Agreement, may  
15 be used for this purpose but is not required. The Class Member may challenge the allocation by  
16 communicating with the Administrator via fax, email or mail. The Administrator must encourage  
17 the challenging Class Member to submit supporting documentation. In the absence of any  
18 contrary documentation, the Administrator is entitled to presume that the Work Weeks contained  
19 in the Class Notice are correct so long as they are consistent with the Class Data. The  
20 Administrator's determination of each Class Member's allocation of Work Weeks and/or PAGA  
21 Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The  
22 Administrator shall promptly provide copies of all challenges to calculation of Work Weeks  
23 and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's  
24 determination the challenges.

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

2 19. Participating Class Members may send written objections to the Administrator, by  
3 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire  
4 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A  
5 Participating Class Member who elects to send a written objection to the Administrator must do  
6 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional  
7 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached  
8 to the Settlement Agreement as Exhibit D may be used for this purpose but is not required.

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

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

21 22. The Court approves, as to form and content, the Class Notice in substantially the  
22 form attached as Exhibit A to the Settlement Agreement, the Election Not to Participate in  
23 Settlement form in substantially the form attached as Exhibit B to the Settlement Agreement, the  
24 Work Weeks Dispute form in substantially the form attached as Exhibit C to the Settlement  
25 Agreement, and the Objection form in substantially the form attached as Exhibit D to the  
26 Settlement Agreement.

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

24. The Court approves, for settlement purposes only, Maria De La Luna Huerta as the Class Representative.

25. The Court approves Apex Class Action as the Administrator.

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 Payment subject to final review by the Court.

29. A Final Approval Hearing shall be held on \_\_\_\_ at \_\_\_\_.m. in Department S17 of the Superior Court for the State of California, County of San Bernardino, located at the San Bernardino District – Civil Division, 247 West Third Street, Dept. S17, San Bernardino, CA 92415-0210 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 Payment to the Class Representative. 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.

**IT IS SO ORDERED.**

\_\_\_\_\_  
**DATE**

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**THE HONORABLE JOSEPH T. ORTIZ  
SUPERIOR COURT JUDGE**

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**EXHIBIT F**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN BERNARDINO**  
**(UNLIMITED JURISDICTION)**

MARGARITA PEREZ and MARIA DE LA LUNA HUERTA on behalf of themselves and all others similarly situated, and the general public, and as “Aggrieved Employees” on behalf of other “Aggrieved Employees” and the State of California under the Labor Code Private Attorneys General Act of 2004,

*Plaintiff(s),*

vs.

WORKFORCE PERSONNEL, INC., California Corporation; DIAMOND WIPES INTERNATIONAL, INC., California Corporation; and DOES 1–50, inclusive,

*Defendant(s).*

Case No. CIVSB2220822

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

Action filed: September 19, 2022  
Dept: 17, The Honorable Joseph T. Ortiz

This matter came on for hearing on \_\_\_\_ at \_\_\_\_m. in Department S17 of the above-captioned court on Plaintiff MARIA DE LA LUNA HUERTA’s (“Plaintiff” or “Huerta”) 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 \$595,079.40 in compromise of all disputed claims on behalf of all individuals Defendant



Diamond Wipes International, Inc. (“Defendant”) employed directly at its Chino location as hourly, non-exempt employees during the Class Period of July 25, 2019 to \_\_\_\_\_ <<the date of preliminary approval of this Settlement or the Alternate End Date>> (“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 DETERMINATIONS<sup>1</sup>:

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

2. For purposes of this Final Order and Judgment, the Class Members are all individuals Defendant Diamond Wipes International, Inc. (“Defendant”) employed directly at its \_\_\_\_\_

<sup>1</sup> A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference.

Chino location as hourly, non-exempt employees during the Class Period of July 25, 2019 to \_\_\_\_\_ <<the date of preliminary approval of this Settlement, or the Alternate End Date>> (“Settlement Class Period”).

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

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

**Released Class Claims.** The Participating Class Members will be bound by the release of the following “Released Class Claims”:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on facts set forth in the Operative Complaint that arose during the Class Period including, e.g., claims for: (a) failure to pay all wages earned for all hours worked and other compensable hours at the correct rates of pay, including for off-the-clock work, hours improperly deducted, minimum wages, regular wages, overtime wages, and doubletime wages; (b) failure to provide rest breaks or compensation in lieu thereof; (c) failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to reimburse for necessary business-related expenses; (e) failure to provide accurate and complete itemized wage statements and maintain payroll records; (f) failure to timely pay

1 all wages due during employment and upon separation of employment; and (g) claims for  
2 unfair competition. (“Released Class Claims”). Except for Plaintiff’s Release by Plaintiff  
3 and as set forth in Section 6.3 of this Agreement, Participating Class Members do not  
4 release any other claims, including claims for vested benefits, wrongful termination,  
5 violation of the Fair Employment and Housing Act, unemployment insurance, disability,  
6 social security, workers’ compensation, or claims based on facts occurring outside the  
7 Class Period. This release does not apply to Defendant Workforce Personnel, Inc., or any  
8 of its officers, directors, employees or agents.

9 **Released PAGA Claims:** The Aggrieved Employees will be bound by the release of the  
10 following “Released PAGA Claims”:

11 All Aggrieved Employees are deemed to release, on behalf of themselves and their  
12 respective former and present representatives, agents, attorneys, heirs, administrators,  
13 successors, and assigns, the Released Parties from all claims for PAGA penalties that were  
14 alleged, or reasonably could have been alleged, based on the facts set forth in the  
15 Operative Complaint and the PAGA Notice that arose during the PAGA Period including,  
16 e.g., claims for: (a) failure to pay all wages earned for all hours worked and other  
17 compensable hours at the correct rates of pay, including for off-the-clock work, hours  
18 improperly deducted, minimum wages, regular wages, overtime wages, and doubletime  
19 wages; (b) failure to provide compliant rest breaks or compensation in lieu thereof; (c)  
20 failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to  
21 reimburse for necessary business-related expenses; (e) failure to provide accurate and  
22 complete itemized wage statements and maintain payroll records; (f) failure to timely pay  
23 all wages due during employment and upon separation of employment; and (g) claims for  
24 unfair competition. (“Released PAGA Claims”). The foregoing release shall be binding  
25 on Plaintiff, the Aggrieved Employees, and the State of California, and shall bar by res  
26 judicata any claim under the PAGA brought by any person, including the Aggrieved  
27 Employees, on behalf of the State of California, as to any claims predicated on the

1 Released PAGA Claims. Aggrieved Employees do not release claims for wages or  
2 damages unless such Aggrieved Employee is a Participating Class Member. This release  
3 does not apply to Defendant Workforce Personnel, Inc., or any of its officers, directors,  
4 employees or agents.

5 **“Released Parties”** shall mean Defendant and each of its former and present officers,  
6 directors, owners, attorneys, insurers, employees and agents.

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

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

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

a. Class Counsel fees & costs of \$198,359.80 in attorneys' fees and \$\_\_\_\_\_ in litigation costs to Class Counsel;

b. \$5,000.00 as a Class Representative Service Payment award payable to Plaintiff Maria De La Luna Huerta for her service as a Class Representative;

c. \$10,000.00 in costs of the Administrator payable to Apex Class Action for its services as the Administrator; and

d. Payment of \$3,750.00 (75% of the \$5,000.00 PAGA Penalties) to the LWDA.

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

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

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

10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement Share check. After the expiration of the 180-day period, on Defendant's behalf, the Administrator

1 shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on  
2 the Residue at the legal rate of interest from the date of entry of the initial judgement to the  
3 California Unclaimed Property Fund.

4 11. The Parties shall file a final accounting report by \_\_\_\_\_. A non-appearance case  
5 review re submission of a final report is scheduled for \_\_\_\_\_ at \_\_\_\_\_.m. in Department S17.

6 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the  
7 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant  
8 deposits funds for distribution by the Administrator to Participating Class Members in accordance  
9 with the Settlement.

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

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

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

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

evidence of the settlement by Defendant to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.

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

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

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**THE HONORABLE JOSEPH T. ORTIZ  
SUPERIOR COURT JUDGE**





1 DAVID GLENN SPIVAK (SBN 179684)  
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7 Abogados de las Demandantes y todas las demás personas en situación similar  
8 (Abogados adicionales de las partes en la página siguiente)

9 **TRIBUNAL SUPERIOR DEL ESTADO DE CALIFORNIA**

10 **PARA EL CONDADO DE SAN BERNARDINO**

11 **(JURISDICCIÓN ILIMITADA)**

12 MARGARITA PEREZ y MARIA DE LA  
13 LUNA HUERTA en nombre propio y en el de  
14 todas las demás personas en situación similar, y  
15 en el público en general, y como “Empleadas  
16 Agraviadas” en nombre de otros “Empleados  
17 Agraviados” y del Estado de California de  
18 conformidad con la Ley de Abogados Generales  
19 Privados del Código Laboral de 2004,

20 *Demandantes,*

21 vs.

22 WORKFORCE PERSONNEL, INC., una  
23 corporación de California; DIAMOND WIPES  
24 INTERNATIONAL, INC., una corporación de  
25 California; y DOES 1–50, inclusive,

26 *Demandado(s).*

Caso No. CIVSB2220822

**ACUERDO DE LIQUIDACIÓN DE LA  
ACCIÓN DE GRUPO Y PAGA Y EL  
AVISO DEL GRUPO**

Acción interpuesta: Septiembre 19, 2022

Departamento: 17, El Honorable Joseph  
T. Ortiz

1 **ABOGADOS ADICIONALES DE LAS DEMANDANTES**

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10 Abogados de las Demandantes y todas las demás personas en una situación similar

11 **ABOGADOS DE LOS DEMANDADO(S)**

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23 Abogados del Demandado, DIAMOND WIPES  
24 INTERNATIONAL, INC.

El presente Acuerdo de Liquidación de la Acción de Grupo y PAGA (“Acuerdo”) se celebra entre la demandante Maria De La Luna Huerta (“Demandante” o “Huerta”), individualmente y en nombre del “Grupo” tal y como se define en el presente documento, y el demandado Diamond Wipes International, Inc. (“Demandado”). El Acuerdo se refiere a la Demandante y al Demandado colectivamente como “Partes” o individualmente como “Parte”.

## **1. DEFINICIONES.**

1.1. “Acción” se refiere a la demanda por la Demandante por supuestas violaciones de salarios y horas de trabajo contra Diamond Wipes International, Inc. titulada “MARGARITA PEREZ y MARIA DE LA LUNA HUERTA en nombre propio y en el de todas las demás personas en situación similar, y en nombre del público en general, y como “Empleadas agraviadas” en nombre de otros “Empleados agraviados” y del Estado de California de conformidad con la Ley de Abogados Generales Privados del Código Laboral de 2004, *Demandante(s)*, contra WORKFORCE PERSONNEL, INC., una corporación de California; DIAMOND WIPES INTERNATIONAL, INC., una corporación de California; y DOES 1–50, inclusive, *Demandado(s)*, Caso No. CIVSB2220822 iniciado el 19 de septiembre de 2022 y pendiente en el Tribunal Superior del Estado de California, Condado de San Bernardino.

1.2. “Administrador” se refiere a Apex Class Action, la entidad neutral que las Partes han acordado designar para administrar el Acuerdo.

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

1.4. “Empleado Agraviado” se refiere a una persona empleada directamente por Diamond Wipes International, Inc. en su ubicación de Chino como empleado por hora no exento durante el Período PAGA.

1.5. “Grupo” se refiere a todas las personas que Diamond Wipes International, Inc. empleó directamente en su ubicación de Chino como empleados por hora no exentos durante el Período del Grupo.

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

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

1 1.8. “Datos del Grupo” se refiere a la información de identificación de los Miembros del  
2 Grupo en posesión del Demandado, incluido el nombre del Miembro del Grupo, la última  
3 dirección postal conocida, el número de Seguro Social y el número de Semanas Laborales del  
Período del Grupo y los Períodos de Pago de PAGA.

4 1.9. “Miembro del Grupo” o “Miembro de Grupo del Acuerdo” se refiere a un miembro  
5 del Grupo, ya sea como Miembro del Grupo Participante o Miembro del Grupo No Participante  
6 (incluido un Miembro del Grupo No Participante que reúna los requisitos para ser considerado  
Empleado Agraviado).

7 1.10. “Búsqueda de direcciones de los Miembros del Grupo” se refiere a la investigación  
8 y búsqueda por parte del Administrador de las direcciones postales actuales de los Miembros del  
9 Grupo utilizando todas las fuentes, métodos y medios razonablemente disponibles, incluidos,  
entre otros, la base de datos nacional de cambios de dirección, la localización de personas y el  
contacto directo por parte del Administrador con los Miembros del Grupo.

10 1.11. “Aviso del Grupo” se refiere al AVISO APROBADO POR EL TRIBUNAL  
11 SOBRE EL ACUERDO DE LA ACCIÓN DE GRUPO Y LA FECHA DE LA AUDIENCIA  
12 PARA LA APROBACIÓN FINAL DEL TRIBUNAL, que se enviará por correo a los Miembros  
13 del Grupo en inglés con una traducción al español en el formulario, sin variación sustancial,  
adjunto como Anexo A y está incorporado como referencia a este Acuerdo.

14 1.12. “Período del Grupo” se refiere al período comprendido entre el 25 de julio de 2019  
15 y la fecha de aprobación preliminar de este Acuerdo, o la Fecha de finalización alternativa (según  
se define en el Párrafo 9 más adelante), lo que ocurra primero.

16 1.13. “Representante del Grupo” se refiere a Maria De La Luna Huerta, la demandante  
17 nombrada en la demanda operativa en la Acción que solicita la aprobación del Tribunal para  
actuar como Representante del Grupo.

18 1.14. “Pago de Servicios de Representante del Grupo” se refiere al pago que se le hace a  
19 la Representante del Grupo por iniciar la Acción y proporcionar servicios en apoyo de la Acción.

20 1.15. “Tribunal” se refiere al Tribunal Superior de California, Condado de San  
Bernardino.

21 1.16. “Demandado” se refiere a Diamond Wipes International, Inc.

22 1.17. “Abogado de la Defensa” se refiere a Alfred Landegger, Evelyn Zarraga y Joseph  
P. Sklar de Landegger Verano, ALC.

23 1.18. “Fecha de Entrada en Vigor” se refiere a la fecha en la que hayan ocurrido las dos  
24 circunstancias siguientes: (a) el Tribunal dicta una Sentencia sobre su Orden de Aprobación Final  
del Acuerdo; y (b) la Sentencia es definitiva. La Sentencia es definitiva a partir de la última de  
25 las siguientes circunstancias: (a) si ningún Miembro del Grupo Participante se opone al Acuerdo,  
26 el día en que el Tribunal dicta la Sentencia; (b) si uno o más Miembros del Grupo Participantes  
se oponen al Acuerdo, el día siguiente a la fecha límite para presentar un aviso de apelación  
27 contra la Sentencia; o (c) si se presenta una apelación oportuna contra la Sentencia, el día

siguiente en que el Tribunal de apelación confirme la Sentencia y emita una remisión.

1.19. “Aprobación Final” se refiere a la orden del Tribunal que otorga la aprobación final del Acuerdo.

1.20. “Audiencia de Aprobación Final” se refiere a la audiencia del Tribunal sobre la Moción para la Aprobación Final del Acuerdo.

1.21. “Sentencia Final” se refiere a la Sentencia dictada por el Tribunal al Otorgar la Aprobación Final del Acuerdo. Se adjunta como Anexo F, un formulario de la propuesta de la Sentencia Final.

1.22. “Monto Bruto del Acuerdo” se refiere a \$595,079.40, que es el monto total que el Demandado se compromete a pagar de conformidad con el presente Acuerdo, excepto lo dispuesto en el Párrafo 9 más adelante, y sin incluir los impuestos sobre la nómina del empleador adeudados por las Porciones Salariales de los Pagos Individuales del Grupo. El Monto Bruto del Acuerdo se utilizará para pagar los Pagos Individuales del Grupo, los Pagos Individuales de PAGA, el Pago de PAGA a la LWDA, el Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo, el Pago de Servicios de Representante del Grupo y el Pago de Gastos de Administración. El Demandado pagará los impuestos sobre la nómina que le corresponden como empleador, además del Monto Bruto del Acuerdo.

1.23. “Pago Individual del Grupo” se refiere a la parte proporcional del Monto Neto del Acuerdo que corresponde a cada Miembro del Grupo Participante, calculada en función del número de Semanas Laborales trabajadas durante el Período del Grupo.

1.24. “Pago Individual de PAGA” se refiere a la parte proporcional del 25% de las Sanciones PAGA que le corresponde al Empleado Agraviado, calculada en función del número de Períodos de pago trabajados durante el Período PAGA.

1.25. “Sentencia” se refiere a la sentencia dictada por el Tribunal basada en la Aprobación Final.

1.26. “LWDA” se refiere a la Agencia de Desarrollo Laboral y de la Fuerza Laboral de California, la agencia autorizada, según la sección 2699, subdivisión (i) del Código Laboral.

1.27. “Pago de PAGA a la LWDA” se refiere al 75% de las Sanciones de PAGA pagadas a la LWDA en virtud de la sección 2699, subdivisión (i) del Código Laboral.

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

Individuales del Grupo.

1.29. “Miembro del Grupo No Participante” se refiere a cualquier Miembro del Grupo que opte por excluirse del Acuerdo enviando al Administrador una Solicitud de exclusión válida y oportuna.

1.30. “Paquete de Aviso” se refiere al Aviso del Grupo (Anexo A), el formulario de Elección de No Participar en el Acuerdo (Anexo B), el formulario de Disputa de Semanas Laborales (Anexo C) y el formulario de Objeción (Anexo D) en inglés con traducción al español.

1.31. “Período de Pago de PAGA” se refiere a cualquier Período de Pago durante el cual un Empleado Agraviado trabajó para el Demandado durante al menos un día durante el Período de PAGA.

1.32. “Período de PAGA” se refiere al período comprendido entre el 7 de septiembre de 2021 y la fecha de aprobación preliminar del presente Acuerdo, o la Fecha de finalización alternativa (tal y como se define en el Párrafo 9 más adelante), lo que ocurra primero.

1.33. “PAGA” se refiere a la Ley de Abogados Generales Privados Generales de California (Código Laboral, secciones 2698 *et seq.*).

1.34. “Aviso de PAGA” se refiere a las cartas enviadas por Margarita Perez el 7 de septiembre de 2022 y la Demandante Huerta el 22 de junio de 2025 al Demandado y a la LWDA, en las que se les proporcionó un aviso de conformidad con la sección 2699.3, subdivisión (a) del Código Laboral, colectivamente.

1.35. “Sanciones de PAGA” se refiere al monto total de las sanciones civiles de PAGA (\$5,000.00) que se pagarán del Monto Bruto del Acuerdo, asignándose el 25% a los Empleados Agraviados (\$1,250.00) y el 75% a la LWDA (\$3,750.00) en concepto de la liquidación de las reclamaciones PAGA.

1.36. “Miembro del Grupo Participante” se refiere a un Miembro del Grupo que no presenta una Solicitud de Exclusión válida y oportuna del Acuerdo.

1.37. “Demandante” se refiere a María De La Luna Huerta, la demandante nombrada en la Acción.

1.38. “Aprobación Preliminar” se refiere a la Orden del Tribunal que Otorga la Aprobación Preliminar del Acuerdo.

1.39. “Orden de Aprobación Preliminar” se refiere a la propuesta de la Orden que Otorga la Aprobación Preliminar y la Aprobación del Acuerdo PAGA. Se adjunta como Anexo E un formulario de la propuesta de la Orden de Aprobación Preliminar.

1.40. “Reclamaciones del Grupo Exoneradas” se refiere a las reclamaciones que se exoneran tal y como se describe en el Párrafo 6.2 más adelante.

1.41. “Reclamaciones PAGA Exoneradas” se refiere a las reclamaciones que se exoneran tal y como se describe en el Párrafo 6.3 más adelante.

1.42. “Partes Exoneradas” se refiere al Demandado y cada uno de sus anteriores y presentes ejecutivos, directores, propietarios, abogados, aseguradoras, empleados y agentes. Las

1 “Partes Exoneradas” no incluyen a Workforce Personnel, Inc. ni a ninguno de sus ejecutivos,  
2 directores, empleados o agentes.

3 1.43. “Solicitud de Exclusión” se refiere a la entrega por parte de un Miembro del Grupo  
4 de una Solicitud de Exclusión por escrito y firmada por el Miembro del Grupo para ser excluido  
del Acuerdo. Se adjunta como Anexo B el formulario de Elección de No Participar en el Acuerdo.

5 1.44. “Fecha Límite de Respuesta” se refiere a los sesenta (60) días después de que el  
6 Administrador envíe por correo el Aviso a los Miembros del Grupo y a los Empleados  
7 Agraviados, y será la última fecha en la que los Miembros del Grupo podrán: (a) enviar por fax,  
8 correo electrónico o correo postal una Solicitud de Exclusión del Acuerdo, o (b) enviar por fax,  
9 correo electrónico o correo postal su Objeción al Acuerdo. Los Miembros del Grupo a quienes  
se les vuelva a enviar el Paquete de Aviso después de haber sido devueltos no entregables al  
Administrador tendrán 14 días naturales adicionales después de que haya vencido la Fecha Límite  
de Respuesta.

10 1.45. “Liquidación” se refiere a la resolución de la Acción efectuada por el presente  
11 Acuerdo y la Sentencia.

12 1.46. “Semana Laboral” se refiere a cualquier semana durante la cual un Miembro del  
Grupo trabajó para el Demandado por lo menos un día durante el Período del Grupo.

13 1.47. Se adjunta como Anexo C el formulario de Disputa de Semana Laboral.

## 14 **2. CONSIDERANDOS.**

15 2.1. El 19 de septiembre de 2022, se inició esta Acción mediante la presentación de una  
16 Demanda en la que alegaba causas de acción contra el Demandado por no pagar salarios, por  
17 hacer deducciones salariales no autorizadas e ilegales, por no proporcionar períodos de comida,  
18 por no autorizar ni permitir períodos de descanso, por no emitir nóminas salariales adecuadas,  
19 por no indemnizar los gastos laborales, por no pagar los salarios a tiempo y por otras  
reclamaciones relacionadas. El 14 de noviembre de 2025, se presentó una Primera Demanda  
Modificada en la que se agregó a Huerta como demandante nombrada. La Primera Demanda  
Modificada es la demanda operativa en la Acción (la “Demanda Operativa”). El Demandado  
niega las alegaciones en la Demanda Operativa, niega cualquier incumplimiento de las leyes  
identificadas en la Demanda Operativa y niega toda responsabilidad por las causas de acción  
alegadas.

22 2.2. De conformidad con la sección 2699.3, subdivisión (a) del Código Laboral, la  
23 Demandante Huerta y la Demandante Perez notificaron por escrito y oportunamente al  
24 Demandado y a la LWDA mediante el envío del Aviso PAGA.

25 2.3. El 19 de marzo de 2025, las Partes, a través de sus respectivos abogados, participaron  
26 en una mediación de un día completo presidida por Steve Mehta, *esq.* que dio lugar al presente  
Acuerdo para resolver la Acción.

2.4. Antes de la mediación, las partes obtuvieron, a través de un proceso informal de revelación de pruebas, el número de Semanas Laborales, el número de empleados comparables, el número de períodos de pago, las tasas de pago promedio, muestras de los registros de horarios, muestras de los registros de nóminas, las políticas escritas e información relacionada. La investigación de la Demandante fue suficiente para satisfacer los criterios de aprobación del tribunal establecidos en *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 y *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

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

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

### **3. TÉRMINOS MONETARIOS.**

3.1. Monto Bruto del Acuerdo. Salvo que se disponga lo contrario en el Párrafo 9 más adelante, el Demandado se compromete a pagar \$595,079.40 y nada más como Monto Bruto del Acuerdo y a pagar por separado la participación del Demandado que le corresponde de los impuestos sobre la nómina del empleador adeudados por las Porciones Salariales de los Pagos Individuales del Grupo. El Demandado no tiene obligación de pagar ninguna porción del Monto Bruto del Acuerdo (ni ningún impuesto sobre la nómina) antes de la fecha límite establecida en el Párrafo 4.3 del presente Acuerdo. El Administrador desembolsará el Monto Bruto del Acuerdo en su totalidad sin solicitar ni exigir a los Miembros del Grupo Participantes ni a los Empleados Agraviados que presenten alguna reclamación como condición para el pago. Ninguna parte del Monto Bruto del Acuerdo se devolverá al Demandado.

3.2. Pagos con cargo al Monto Bruto del Acuerdo. El Administrador realizará y deducirá los siguientes pagos con cargo al Monto Bruto del Acuerdo, en los montos especificados por el Tribunal en la Aprobación Final:

3.2.1. A la Demandante: Pago de Servicios de Representante del Grupo a la Representante del Grupo el monto de no más de \$5,000.00 (además de su Pago Individual como miembro del Grupo y su Pago Individual de PAGA que la Representante del Grupo tenga derecho a recibir como Miembro del Grupo Participante). El Demandado no se opondrá a la solicitud de la Demandante de un Pago de Servicios de Representante del Grupo que no exceda este monto. Como parte de la Moción para el Pago de Honorarios del Abogado del Grupo y el Pago de Gastos de Litigio del Grupo, la Demandante solicitará la aprobación del Tribunal para el Pago de Servicios de Representante del Grupo en un plazo máximo de 16 días hábiles antes de la Audiencia de Aprobación Final. Si el Tribunal aprueba el Pago de Servicios de Representante del Grupo inferior al monto solicitado, el Administrador retendrá el resto en el Monto Neto del



1 Acuerdo. El Administrador pagará el Pago de Servicios de Representante del Grupo utilizando  
2 el Formulario 1099 del IRS. La Demandante asume toda responsabilidad y obligación por los  
3 impuestos laborales adeudados sobre el Pago de Servicios de Representante del Grupo.

4 3.2.2. Al Abogado del Grupo: El Pago de Honorarios del Abogado del Grupo que  
5 no supere un tercio del Monto Bruto del Acuerdo, que actualmente se estima en \$198,359.80 y  
6 un Pago de Gastos de Litigio del Abogado del Grupo que no supere más de \$15,000.00. El  
7 Demandado no se opondrá a las solicitudes de estos pagos, siempre que no superen estos montos.  
8 La Demandante y/o el Abogado del Grupo presentarán una moción para el Pago de Honorarios  
9 del Abogado del Grupo y el Pago de Gastos de Litigio del Grupo en un plazo máximo de 16 días  
10 hábiles antes de la Audiencia de Aprobación Final. Si el Tribunal aprueba un Pago de Honorarios  
11 del Abogado del Grupo y/o un Pago de Gastos de Litigio del Abogado del Grupo inferior a los  
12 montos solicitados, el Administrador asignará el resto al Monto Neto del Acuerdo. Las Partes  
13 Exoneradas no tendrán ninguna responsabilidad ante el Abogado del Grupo ni ante ningún otro  
14 Abogado de la Demandante que surja por las reclamaciones relacionadas con las porciones  
15 correspondientes al Pago de los Honorarios del Abogado del Grupo y/o al Pago de Gastos de  
16 Litigio del Abogado del Grupo. El Administrador pagará el Pago de Honorarios del Abogado del  
Grupo y el Pago de Gastos del Abogado del Grupo utilizando uno o más Formularios 1099 del  
IRS. El Abogado del Grupo asumen toda la responsabilidad y obligación por los impuestos  
adeudados sobre el Pago de Honorarios del Abogado del Grupo y el Pago de Gastos de Litigio  
del Abogado del Grupo y exonera al Demandado de toda responsabilidad e indemniza al  
Demandado de toda disputa o controversia relacionada con la división o el reparto de alguno de  
estos Pagos.

17 3.2.3. Al Administrador: Un Pago de Gastos del administrador que no supere más  
18 de \$10,000.00, excepto que se demuestre una causa justificada y según lo aprobado por el  
19 Tribunal. En la medida en que los Gastos administrativos sean menores o el Tribunal apruebe un  
20 pago inferior a \$10,000.00, el Administrador retendrá el resto en el Monto Neto del Acuerdo.

21 3.2.4. A cada Miembro del Grupo Participante: Un Pago Individual del Grupo  
22 calculado (a) dividiendo el Monto Neto del Acuerdo entre el número total de Semanas Laborales  
23 trabajadas por todos los Miembros del Grupo Participantes durante el Período del Grupo y (b)  
24 multiplicando el resultado por las Semanas Laborales de cada Miembro del Grupo Participante.

25 3.2.4.1. Asignación de Impuestos de Pagos Individuales del Grupo. El  
26 20.00% del Pago Individual del Grupo de cada Miembro del Grupo Participante se asignará a la  
27 liquidación de las reclamaciones salariales (la “Porción Salarial”). Las Porciones Salariales están  
28 sujetas a retención fiscal y se declararán en el formulario W-2 del IRS. El 80.00% del Pago  
Individual del Grupo de cada Miembro del Grupo Participante se asignará a la liquidación de las  
reclamaciones por intereses y sanciones (la “Porción No Salarial”).

Las porciones no salariales no están sujetas a retenciones salariales y se declararán en los Formularios 1099 del IRS. Los Miembros del Grupo Participantes asumen toda la responsabilidad y obligación de los impuestos laborales adeudados sobre el Pago Individual del Grupo. Independientemente del procesamiento de los pagos a cada Miembro del Grupo Participante, ninguno de los pagos previstos en el presente Acuerdo, incluidas las Porciones Salariales de los Pagos Individuales del Grupo, se considerará como ingreso, salario, remuneración o compensación con el fin de algún plan de beneficio o plan de jubilación aplicable, ni ningún pago según el presente Acuerdo ampliará o modificará el período de empleo de los Miembros del Grupo o de los Empleados Agraviados para ningún propósito.

3.2.4.2. Efecto de los Miembros del Grupo No Participantes en el Cálculo de los Pagos Individuales del Grupo. Los Miembros del Grupo No Participantes no recibirán ningún Pago Individual del Grupo. El Administrador retendrá montos iguales a sus Pagos Individuales del Grupo en el Monto Neto del Acuerdo para distribuirlos entre los Miembros del Grupo Participantes de forma proporcional.

3.2.5. A la LWDA y a los Empleados Agraviados: Las sanciones de PAGA por un monto de \$5,000.00 que se pagarán del Monto Bruto del Acuerdo, con el 75% (\$3,750.00) asignado al Pago de PAGA a la LWDA y el 25% (\$1,250.00) asignado a los Pagos Individuales de PAGA.

3.2.5.1. El Administrador calculará cada Pago Individual de PAGA (a) dividiendo el monto de la participación del 25% de las sanciones de PAGA que corresponde a los Empleados Agraviados, \$1,250.00 entre el número total de Períodos de Pago de PAGA trabajados por todos los Empleados Agraviados durante el Período de PAGA y (b) multiplicando el resultado por los Períodos de Pago de PAGA de cada Empleado Agraviado.

Los Empleados Agraviados asumen toda la responsabilidad y obligación por los impuestos adeudados sobre el Pago Individual PAGA.

3.2.5.2. Si el Tribunal aprueba las Sanciones de PAGA inferiores al monto solicitado, el Administrador asignará el resto al Monto Neto del Acuerdo. El 100% de las sanciones de PAGA se asignan como sanciones y no como salarios. El Administrador declarará los Pagos Individuales de PAGA en los Formularios 1099 del IRS.

#### **4. FINANCIAMIENTO Y PAGOS DE LIQUIDACIÓN.**

4.1. Semanas Laborales del Grupo. Basándose en una revisión de los registros, el Demandado estima que los Miembros del Grupo trabajaron colectivamente un total de 48,777 Semanas Laborales al 19 de marzo de 2025 (es decir, a la fecha en que las Partes participaron en la mediación).

1           4.2. Datos del Grupo. En un plazo máximo de 15 días después de que el Tribunal otorgue  
2 la Aprobación Preliminar del Acuerdo, el Demandado entregará simultáneamente los Datos del  
3 Grupo al Administrador, en forma de hoja de cálculo de Microsoft Excel. Para proteger los  
4 derechos de privacidad de los Miembros del Grupo, el Administrador deberá mantener la  
5 confidencialidad de los Datos del Grupo, utilizar los Datos del Grupo únicamente para los fines  
6 del presente Acuerdo y para ningún otro fin, y restringir el acceso a los Datos del Grupo a los  
7 empleados del Administrador que necesiten acceso a los Datos del Grupo para poner en práctica  
8 y cumplir el presente Acuerdo. El Demandado tiene la obligación continua de notificar  
9 inmediatamente al Abogado del Grupo si descubre que los Datos del Grupo omiten información  
10 que identifica a los Miembros del Grupo y de proporcionar los Datos del Grupo corregidos o  
11 actualizados tan pronto como sea razonablemente posible. Sin ninguna extensión de la fecha  
12 límite en la que el Demandado envíe los Datos del Grupo al Administrador, las Partes y sus  
13 abogados harán todo lo posible, de buena fe, por reconstruir o resolver rápidamente cualquier  
14 problema relacionado con los Datos del Grupo que falten o se hayan omitido.

15           4.3. Financiamiento del Monto Bruto del Acuerdo. El Demandado financiará  
16 íntegramente el Monto Bruto del Acuerdo, asimismo financiará los montos necesarios para pagar  
17 íntegramente la participación del Demandado en los impuestos sobre la nómina, transfiriendo los  
18 fondos al Administrador en un plazo máximo de 14 días a partir de la Fecha de Entrada en Vigor.  
19 El pago del Demandado del Monto Bruto del Acuerdo y de la participación del Demandado que  
20 le corresponde de los impuestos sobre la nómina está supeditado a la recepción de las  
21 instrucciones de pago del Administrador. Las obligaciones de pago del Demandado con respecto  
22 al Monto Bruto del Acuerdo y la participación correspondiente al Demandado de los impuestos  
23 sobre la nómina se cumplirán al iniciar la transferencia electrónica de los fondos de los montos  
24 previstos en el presente Acuerdo de Liquidación de conformidad con las instrucciones del  
25 Administrador del Acuerdo. En caso de que una transferencia electrónica de fondos no se realice  
26 correctamente, las Partes acuerdan cooperar de buena fe para resolver los problemas.

27           4.4. Pagos del Monto Bruto del Acuerdo. En un plazo de 14 días después de que el  
28 Demandado haya depositado el Monto Bruto del Acuerdo, el Administrador enviará por correo  
postal los cheques correspondientes a todos los Pagos Individuales del Grupo, todos los Pagos  
Individuales de PAGA, el Pago de PAGA a la LWDA, el Pago de Gastos de Administración, el  
Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo  
y el Pago de Servicios de Representante del Grupo. El desembolso del Pago de Honorarios del  
Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y el Pago de Servicios  
de Representante del Grupo no se realizará hasta que se hayan desembolsado los Pagos  
Individuales del Grupo y los Pagos Individuales de PAGA. El Administrador del Acuerdo  
también apartará los impuestos sobre la nómina del empleador y todos los impuestos,  
contribuciones y retenciones de nómina de los empleados, y los remitirá oportunamente a las

1 autoridades gubernamentales correspondientes.

2 4.4.1. El Administrador emitirá cheques correspondientes a los Pagos Individuales del  
3 Grupo y/o los Pagos Individuales de PAGA y los enviará a los Miembros del Grupo por correo  
4 postal de primera clase de Estados Unidos (First Class U.S. Mail), con franqueo prepagado. En  
5 el anverso de cada cheque se indicará de forma destacada la fecha (no menos de 180 días después  
6 de la fecha de envío) en la que se anulará el cheque. El Administrador cancelará todos los cheques  
7 no se hayan cobrado antes de la fecha de anulación. El Administrador enviará cheques  
8 correspondientes a los Pagos Individuales de Liquidación a todos los Miembros del Grupo  
9 Participantes (incluidos aquellos cuyo Paquete de Aviso haya sido devuelto sin entregar). El  
10 Administrador enviará cheques correspondientes a los Pagos Individuales de PAGA a todos los  
11 Empleados agraviados, incluidos los Miembros del Grupo no participantes que califiquen como  
12 Empleados agraviados (incluidos aquellos cuyo Paquete de Aviso haya sido devuelto por no  
haberse podido entregar). El Administrador puede enviar a los Miembros del Grupo Participantes  
un solo cheque que combine el Pago Individual del Grupo y el Pago Individual de PAGA. Antes  
de enviar los cheques por correo postal, el Administrador debe actualizar las direcciones  
postales de los destinatarios utilizando la Base de Datos Nacional de Cambios de Dirección.

13 4.4.2. El Administrador deberá realizar una Búsqueda de Direcciones de todos los demás  
14 Miembros del Grupo cuyos cheques hayan sido devueltos por no haberse podido entregar y sin  
15 dirección de reenvío del Servicio Postal de los Estados Unidos (USPS). En un plazo de siete (7)  
16 días a partir de la recepción de un cheque devuelto, el Administrador deberá volver a enviar los  
17 cheques por correo a la dirección de reenvío de USPS proporcionada o a una dirección obtenida  
18 mediante la Búsqueda de Direcciones de los Miembros del Grupo. El Administrador no tendrá  
19 que tomar medidas adicionales para entregar los cheques a los Miembros del Grupo cuyos  
cheques reenviados por correo sean devueltos por no haberse podido entregar. El Administrador  
enviará de inmediato un cheque de reemplazo a los Miembros del Grupo cuyo cheque original  
se haya perdido o extraviado, siempre que lo soliciten antes de la fecha de anulación.

20 4.4.3. Para los Miembros del Grupo cuyo cheque de Pago Individual del Grupo o cheque  
21 de Pago Individual de PAGA no se haya cobrado y se haya cancelado después de la fecha de  
22 anulación, el Administrador transferirá los fondos representados por dichos cheques al Fondo de  
23 Propiedad No Reclamada de la Contraloría de California a nombre del Miembro del Grupo, sin  
dejar ningún “saldo pendiente” sujeto a los requisitos la Sección 384, subdivisión (b) del Código  
de Procedimiento Civil de California.

24 4.4.4. El pago de Pagos Individuales del Grupo y los Pagos Individuales de PAGA no  
25 obligarán al Demandado a conferir ningún beneficio adicional ni a realizar ningún pago adicional  
26 a los Miembros del Grupo (como contribuciones al plan 401(k) o bonificaciones) que no sean los  
especificados en el presente Acuerdo.

## 27 5. [OMITIDO]

1 **6. EXONERACIÓN DE RECLAMACIONES.** A partir de la fecha en que el Demandado  
2 financie íntegramente el Monto Bruto del Acuerdo y financie todos los impuestos sobre la nómina  
3 del empleador adeudados por la Porción Salarial de los Pagos Individuales del Grupo, la  
4 Demandante, los Miembros del Grupo y el Abogado del Grupo renunciarán a presentar  
reclamaciones contra todas las Partes Exoneradas de la siguiente manera:

5 6.1 Exoneración de la Demandante. Además de las Reclamaciones del Grupo Exoneradas  
6 y las Reclamaciones de PAGA Exoneradas que se describen a continuación, la Demandante, a  
7 título individual y en nombre y representación de sus respectivos anteriores y presentes cónyuges,  
8 representantes, agentes, abogados, herederos, administradores, sucesores, y cesionarios en  
9 general, exoneran y liberan a las Partes Exoneradas de todas las reclamaciones, transacciones,  
10 sucesos, demandas, derechos, responsabilidades y causas de acción de cualquier naturaleza y  
11 descripción, ya sean conocidos o desconocidos, alegados o que pudieran haberse alegado, ya sea  
12 por agravio, contrato, o por violación de cualquier estatuto, norma, ley o reglamento estatal o  
13 federal que surja o esté relacionado con cualquier acto u omisión de las Partes Exoneradas hasta  
14 la fecha en que se firme íntegramente el presente Acuerdo de Liquidación (“Exoneración de la  
15 Demandante”). La Exoneración de la Demandante no se extiende a ninguna reclamación o acción  
16 para hacer cumplir este Acuerdo, ni a aquellos derechos que, por ley, no se pueden renunciar,  
17 incluidos, entre otros, las reclamaciones de beneficios adquiridos, beneficios por desempleo,  
18 beneficios por discapacidad, beneficios de seguro social, beneficios de indemnización laboral  
que hayan surgido en cualquier momento. La Demandante reconoce que la Demandante puede  
descubrir hechos o leyes diferentes o adicionales a los hechos o leyes que la Demandante conoce  
o cree que son verdaderos, pero acepta, sin embargo, que la Exoneración de la Demandante será  
y seguirá siendo efectiva en todos los aspectos, independientemente de dichos hechos diferentes  
o adicionales o del descubrimiento de otros hechos o leyes por parte de la Demandante. Esta  
exoneración no se aplica a Workforce Personnel, Inc., ni a ninguno de sus directivos, directores,  
empleados o agentes.

19 6.1.1 Renuncia de la Demandante a los derechos que le asisten en virtud de la Sección  
20 1542 del Código Civil de California. A los efectos de la Exoneración de la Demandante, la  
21 Demandante renuncia expresamente a las disposiciones, derechos y beneficios, si los hubiera, de  
22 la sección 1542 del Código Civil de California, que dice lo siguiente:

23 **“Una exoneración general no se extiende a las reclamaciones que el acreedor o la parte  
24 que exonera no conozca ni sospeche que existen a su favor en el momento de firmar la  
25 exoneración, y que, de haberlas conocido, habrían afectado de manera sustancial su  
26 acuerdo con el deudor o la Parte Exonerada”.**

27 6.2 Exoneración de los Miembros del Grupo Participantes: Todos los Miembros del  
28 Grupo Participantes, en nombre propio y en el de sus respectivos anteriores y presentes  
representantes, agentes y abogados, herederos, administradores, sucesores y cesionarios, eximen

1 a las Partes Exoneradas de todas las reclamaciones que se alegaron, o que razonablemente  
2 podrían haberse alegado, basándose en los hechos expuestos en la Demanda Operativa que  
3 surgieron durante el Período del Grupo, incluyendo, por ejemplo, reclamaciones por: (a) no pagar  
4 todos los salarios devengados por todas las horas trabajadas y otras horas compensables a las  
5 tarifas salariales correctas, incluyendo el trabajo fuera del horario laboral, las horas deducidas  
6 indebidamente, los salarios mínimos, los salarios regulares, los salarios por horas extras y los  
7 salarios por horas dobles; (b) no proporcionar períodos de descanso o compensación en su lugar;  
8 (c) no proporcionar períodos de comida conformes con la normativa o compensación en su lugar;  
9 (d) no reembolsar los gastos necesarios relacionados con el trabajo; (e) no proporcionar nominas  
10 salariales detalladas, precisas y completas y no mantener registros de nómina; (f) no pagar  
11 puntualmente todos los salarios adeudados durante el empleo y al término de la relación laboral;  
12 y (g) reclamaciones por competencia desleal. (“Reclamaciones del Grupo Exoneradas”). Excepto  
13 por la Exoneración de la Demandante por parte de la Demandante y según lo establecido en la  
14 sección 6.3 del presente Acuerdo, los Miembros del Grupo Participantes no exoneran ninguna  
15 otra reclamación, incluidas las reclamaciones por beneficios adquiridos, despido improcedente,  
16 violación de la Ley de Empleo y Vivienda Justos, seguro de desempleo, discapacidad, seguro  
17 social, compensación de trabajadores o reclamaciones basadas en hechos ocurridos fuera del  
18 Período del Grupo. Esta exoneración no se aplica a la empresa demandada Workforce Personnel,  
19 Inc., ni a ninguno de sus ejecutivos, directores, empleados o agentes.

#### 14 6.3 Exoneración de las Reclamaciones de PAGA por parte de los Empleados Agraviados.

15 Se considera que todos los Empleados Agraviados exoneran, en nombre propio y en el de sus  
16 respectivos anteriores y presentes representantes, agentes, abogados, herederos, administradores,  
17 sucesores y cesionarios, a las Partes Exoneradas de todas las reclamaciones por sanciones de  
18 PAGA que se alegaron, o que razonablemente podrían haberse alegado, basándose en los hechos  
19 establecidos en la Demanda Operativa y en los Avisos de PAGA que surgieron durante el Período  
20 de PAGA, incluyendo, por ejemplo, reclamaciones por: (a) no pagar todos los salarios  
21 devengados por todas las horas trabajadas y otras horas compensables a las tarifas salariales  
22 correctas, incluyendo el trabajo fuera del horario laboral, las horas deducidas indebidamente, los  
23 salarios mínimos, los salarios regulares, los salarios por horas extra y los salarios por tiempo  
24 doble; (b) no proporcionar períodos de descanso conformes con la normativa o compensación en  
25 lugar; (c) no proporcionar períodos de comida conformes con la normativa o compensación en  
26 lugar; (d) no reembolsar los gastos necesarios relacionados con el trabajo; (e) no proporcionar  
27 nominas salariales detalladas, precisas y completas y no mantener registros de nómina; (f) no  
28 pagar puntualmente todos los salarios adeudados durante el empleo y al finalizar la relación  
laboral; y (g) reclamaciones por competencia desleal. (“Reclamaciones de PAGA Exoneradas”).  
La presente exoneración será vinculante para la Demandante, los Empleados Agraviados y el  
Estado de California, y excluirá por fuerza de cosa juzgada cualquier reclamación al amparo de  
la PAGA interpuesta por cualquier persona, incluidos los Empleados Agraviados, en nombre del

1 Estado de California, en relación con cualquier reclamación basada en las Reclamaciones de  
2 PAGA Exoneradas. Los Empleados agraviados no exoneran las reclamaciones por salarios o  
3 daños y perjuicios, a menos que dicho Empleado Agraviado sea un Miembro del Grupo  
4 Participante. Esta exoneración no se aplica a la empresa demandada Workforce Personnel, Inc.,  
ni a ninguno de sus ejecutivos, directores, empleados o agentes.

5 **7. MOCIÓN PARA LA APROBACIÓN PRELIMINAR.** La Demandante preparará y  
6 presentará una moción para la aprobación preliminar (“Moción para la Aprobación Preliminar”).  
Se adjunta como Anexo E un modelo de Orden de Aprobación Preliminar.

7 7.1 Declaraciones del Demandado. El Abogado de la Defensa y el Demandado declaran  
8 que no tienen conocimiento de ningún otro asunto o acción pendiente que plantee reclamaciones  
9 que se extinguirán o se verán afectadas negativamente por el Acuerdo. El Demandado y el  
10 Abogado de la Defensa no tienen conocimiento de ningún posible conflicto de intereses con el  
11 Administrador. El Demandado declara además que, basándose en sus registros e información  
disponible, el español y el mandarín son los únicos idiomas distintos del inglés necesarios para  
garantizar que el Aviso del Grupo proporcione la información adecuada a los Miembros del  
Grupo.

12 7.2 Responsabilidades de la Demandante. La Demandante preparará y entregará al  
13 Abogado de la Defensa todos los documentos necesarios para obtener la Aprobación Preliminar,  
14 incluidos: (i) una redacción del aviso, y un memorando de apoyo de la Moción para la  
15 Aprobación Preliminar que incluye un análisis del Acuerdo según *Dunk/Kullar* y una solicitud  
16 de aprobación del Acuerdo PAGA según la sección 2699, subdivisión (f)(2)) del Código Laboral;  
17 (ii) una redacción de la propuesta de la Orden que Otorga la Aprobación Preliminar y la  
18 Aprobación del Acuerdo de PAGA; (iii) una redacción de la propuesta del Paquete de Aviso; (iv)  
19 una declaración firmada por el Administrador en la que adjunte su oferta de “no exceder” para  
20 administrar el Acuerdo y que certifique su disposición a prestar sus servicios, su competencia y  
21 los procedimientos operativos para proteger la seguridad de los Datos del Grupo; los montos de  
22 cobertura del seguro por cualquier violación de la seguridad de los datos, malversación de fondos  
23 u otra mala conducta; todos los hechos relevantes para cualquier conflicto de intereses real o  
24 potencial con los Miembros del Grupo; y la naturaleza y el alcance de cualquier relación  
25 financiera con la Demandante, el Abogado del Grupo, el Demandado o el Abogado de la Defensa;  
26 (v) una declaración firmada por la Demandante que confirme la voluntad y competencia para  
27 notificar y divulgar todos los hechos relevantes para cualquier conflicto de intereses real o  
28 potencial con los Miembros del Grupo y/o el Administrador; y (vi) una declaración firmada por  
cada bufete de Abogados del Grupo que atestigüe su competencia para representar a los  
Miembros del Grupo; su transmisión oportuna a la LWDA de todos los documentos de PAGA  
necesarios (notificación inicial de violaciones (sección 2699.3, subdivisión (a) del Código  
Laboral), Demanda Operativa (sección 2699, subdivisión (l)(1) del Código Laboral), el presente  
Acuerdo (sección 2699, subdivisión (l)(2) del Código Laboral). En sus Declaraciones, la

1 Demandante y el Abogado del Grupo declararán que no tienen conocimiento de ningún otro  
2 asunto o acción pendiente en el que se hagan valer reclamaciones que se extinguirán o se verán  
3 afectadas negativamente por el Acuerdo.

4 7.3 Responsabilidades del Abogado. El Abogado del Grupo y el Abogado de la Defensa  
5 son responsables conjuntamente de finalizar y presentar con rapidez la Moción para la  
6 Aprobación Preliminar en un plazo máximo de 30 días después de la firma íntegra del presente  
7 Acuerdo; obtener una fecha de audiencia inmediata de la Moción para la Aprobación Preliminar;  
8 y para comparecer en el Tribunal para defender la Moción para la Aprobación Preliminar. El  
9 Abogado del Grupo es responsable de entregar la Aprobación Preliminar del Tribunal al  
10 Administrador.

11 7.4 Obligación de cooperación. Si las Partes no están conformes con algún aspecto de la  
12 propuesta de la Moción para la Aprobación Preliminar y/o las declaraciones y documentos de  
13 apoyo, el Abogado del Grupo y el Abogado de la Defensa trabajarán conjuntamente en nombre  
14 de las Partes, reuniéndose en persona o por teléfono, y de buena fe, para resolver el desacuerdo.  
15 Si el Tribunal no concede la Aprobación Preliminar o condiciona la Aprobación Preliminar a  
16 cualquier cambio sustancial en este Acuerdo, el Abogado del Grupo y el Abogado de la Defensa  
17 trabajarán conjuntamente de forma inmediata en nombre de las Partes, reuniéndose en persona o  
18 por teléfono, y de buena fe, para modificar el Acuerdo y satisfacer así las preocupaciones del  
19 Tribunal.

## 15 **8. ADMINISTRACIÓN DEL ACUERDO.**

16 8.1 Selección del Administrador. Las Partes han seleccionado conjuntamente a Apex  
17 Class Action para que actúe como Administrador y han verificado que, como condición para su  
18 nombramiento, Apex Class Action acepta quedar vinculado por el presente Acuerdo y cumplir,  
19 en calidad de fiduciario, todas las obligaciones especificadas en el presente Acuerdo a cambio  
20 del pago de Gastos de Administración, incluidos, entre otros, el cálculo de los Pagos Individuales  
21 del Grupo que se emitirán a los Miembros del Grupo Participante, el Pago Individual de PAGA  
22 que se emitirá a los Empleados Agravados, el envío de los avisos y su traducción al español y al  
23 mandarín, la preparación de todos los cheques y envíos postales, el establecimiento de un fondo  
24 de liquidación calificado y la retención de los diversos pagos de los Demandados que  
25 comprenden el Monto Bruto del Acuerdo y los impuestos sobre la nómina del empleador. Las  
26 Partes y sus Abogados declaran que no tienen ningún interés ni relación, financiera o de otro tipo,  
27 con el Administrador, salvo la relación profesional derivada de experiencias previas en la  
28 administración de acuerdos.

26 8.2 Declaración de Impuestos y Número de Identificación Patronal. El Administrador



será responsable de calcular los impuestos y retenciones aplicables, incluidos los impuestos sobre la nómina del empleador del Demandado adeudados, sobre los Pagos Individuales del Grupo, y de pagar los impuestos y retenciones a las autoridades fiscales o gubernamentales correspondientes con los informes necesarios, y de enviar copias al Abogado de la Defensa. El Administrador emitirá a los Miembros del Grupo Participantes los Formularios W-2 del IRS para las Partes Salariales de los Pagos Individuales del Grupo, los Formularios 1099 del IRS para las Partes No Salariales y los Formularios 1099 del IRS para los Empleados Agraviados para los Pagos Individuales de PAGA, tal y como se describe en este Acuerdo. El Administrador deberá tener y utilizar su propio Número de Identificación Patronal para calcular las retenciones de impuestos sobre la nómina y proporcionar informes a las autoridades fiscales estatales y federales.

8.3 Fondo de Liquidación Calificado. El Administrador establecerá un fondo de liquidación que cumpla con los requisitos de un Fondo de Liquidación Calificado (“QSF”) según la sección 468B-1 del Reglamento del Tesoro de los Estados Unidos.

8.4 Aviso a los Miembros del Grupo.

8.4.1 En un plazo máximo de tres (3) días hábiles después de la recepción de los Datos del Grupo, el Administrador notificará al Abogado del Grupo que se ha recibido la lista e indicará el número de Miembros del Grupo, Empleados Agraviados, Semanas Laborales y Períodos de Pago que aparecen en los Datos del Grupo.

8.4.2 Haciendo todo lo posible por actuar lo antes posible, y en ningún caso más tarde de 14 días después de recibir los Datos del Grupo, el Administrador enviará a todos los Miembros del Grupo identificados en los Datos del Grupo, por correo postal de primera clase del Servicio Postal de los Estados Unidos (“USPS”), el Paquete de Aviso con traducción al español, sustancialmente en los formularios adjuntos a este Acuerdo como **Anexos A, B, C y D**. La primera página del Aviso del Grupo deberá incluir de forma destacada una estimación de los montos en dólares de cualquier Pago Individual del Grupo y/o Pago Individual de PAGA pagadero a los Miembros del Grupo, así como el número de Semanas Laborales y Períodos de Pago de PAGA (si corresponde) utilizados para calcular estos montos. Antes de enviar por correo postal los Paquetes de Aviso, el Administrador actualizará las direcciones de los Miembros del Grupo utilizando la base de datos nacional de cambios de dirección.

8.4.3 En un plazo máximo de tres (3) días hábiles después de que el Administrador reciba cualquier Paquete de Aviso devuelto por el Servicio Postal de los Estados Unidos (USPS) como no entregado, el Administrador volverá a enviar el Paquete de Aviso utilizando cualquier dirección de reenvío proporcionada por USPS. Si el USPS no proporciona una dirección de reenvío, el Administrador realizará una Búsqueda de Direcciones de los Miembros del Grupo y volverá a enviar por correo postal el Paquete de Aviso a la dirección más reciente obtenida. El Administrador no tiene la obligación de realizar más intentos para localizar o enviar el Paquete de Aviso a los Miembros del Grupo cuyo Paquete de Aviso haya sido devuelto por el USPS por segunda vez.

1 8.4.4 Los plazos para las objeciones por escrito de los Miembros del Grupo, las  
2 impugnaciones de las Semanas Laborales y/o los Períodos de Pago de PAGA (disputas) y las  
3 Solicitudes de Exclusión se ampliarán 14 días adicionales además de los 60 días previstos en el  
4 Aviso del Grupo para todos los Miembros del Grupo cuyo aviso se vuelva a enviar por correo  
5 postal. El Administrador informará al Miembro del Grupo de la ampliación del plazo con el  
6 Paquete de Aviso que se vuelva a enviar por correo postal.

7 8.4.5 Si el Administrador, el Demandado o el Abogado del Grupo son contactados  
8 por personas o si descubren a personas que creen que deberían haber sido incluidas en los Datos  
9 del Grupo y deberían haber recibido el Paquete de Aviso, las Partes se reunirán y consultarán  
10 rápidamente, en persona o por teléfono, y de buena fe, con el fin de acordar si incluirlas como  
11 Miembros del Grupo. Si las Partes así lo acuerdan, dichas personas serán Miembros del Grupo  
12 con los mismos derechos que los demás Miembros del Grupo, y el Administrador les enviará,  
13 por correo electrónico o mensajería de entrega al día siguiente, un Aviso del Grupo en el que se  
14 les requerirá que ejerzan las opciones previstas en el presente Acuerdo en un plazo máximo de  
15 14 días después de la recepción del Aviso del Grupo, o en las fechas límite del Aviso del Grupo,  
16 lo que sea posterior.

#### 17 8.5 Solicitudes de Exclusión (exclusión voluntaria).

18 8.5.1 Los Miembros del Grupo que deseen excluirse (exclusión voluntaria) del  
19 Acuerdo del Grupo deberán enviar al Administrador, por fax, correo electrónico o correo postal,  
20 una Solicitud de Exclusión por escrito y firmada en un plazo máximo de 60 días después de la  
21 fecha en que el Administrador envíe por correo el Paquete de Aviso (más 14 días adicionales  
22 para los Miembros del Grupo cuyo Paquete de Aviso se vuelva a enviar por correo postal). Una  
23 Solicitud de Exclusión es una carta de un Miembro del Grupo o de su representante en la que se  
24 comunica de forma razonable la decisión del Miembro del Grupo de ser excluido del Acuerdo y  
25 que incluye el nombre, la dirección postal y la dirección de correo electrónico o el número de  
26 teléfono del Miembro del Grupo. Para que sea válida, la Solicitud de Exclusión debe enviarse  
27 por fax, correo electrónico o por correo con el sello postal correspondiente antes de la fecha límite  
28 de respuesta. Usted puede utilizar el formulario de Elección de No Participar en el Acuerdo  
adjunto como Anexo B, pero no es obligatorio.

8.5.2 El Administrador no podrá rechazar una Solicitud de Exclusión como no  
válida porque no contiene toda la información especificada en el Aviso del Grupo. El  
Administrador aceptará toda Solicitud de Exclusión como válida si el Administrador puede  
determinar razonablemente la identidad de la persona como Miembro del Grupo y el deseo del  
Miembro del Grupo de ser excluido del Acuerdo. La determinación del Administrador será  
definitiva y no podrá ser objeto de apelación ni impugnación. Si el Administrador tiene motivos  
suficientes para cuestionar la autenticidad de una Solicitud de Exclusión, el Administrador puede  
exigir pruebas adicionales de la identidad del Miembro del Grupo.

1 La determinación de autenticidad por parte del Administrador será definitiva y no podrá ser  
2 objeto de apelación ni de ningún otro tipo de impugnación.

3 8.5.3 Todo Miembro del Grupo que no entregue una Solicitud de Exclusión válida  
4 y oportuna se considerará Miembro del Grupo Participante según el presente Acuerdo, con  
5 derecho a todos los beneficios y sujeto a todos los términos y condiciones del Acuerdo, incluidas  
6 las Exoneraciones de los Miembros del Grupo Participantes estipuladas en los párrafos 6.2 y 6.3  
del presente Acuerdo, independientemente de si el Miembro del Grupo Participante recibe  
efectivamente el Aviso del Grupo o se opone al Acuerdo.

7 8.5.4 Todo Miembro del Grupo que entregue una Solicitud de Exclusión válida y  
8 oportuna se considerará Miembro del Grupo No Participante y no recibirá ningún Pago Individual  
9 del Grupo ni tendrá derecho a oponerse a los componentes de la acción de grupo del Acuerdo.  
10 Debido a que las reclamaciones futuras de PAGA están sujetas a la exoneración de las  
11 reclamaciones una vez dictada la Sentencia, se considera que los Miembros del Grupo No  
Participantes que son Empleados Agraviados exoneran las reclamaciones identificadas en el  
párrafo 6.3 de este Acuerdo y tienen derecho a un Pago Individual de PAGA.

12 8.6 Impugnaciones del cálculo de las Semanas Laborales o los Períodos de Pago de  
13 PAGA. Cada Miembro del Grupo tendrá 60 días después de que el Administrador envíe por  
14 correo el Paquete de Aviso (más 14 días adicionales para los Miembros del Grupo cuyo Paquete  
15 de Aviso se vuelva a enviar por correo) para impugnar el número de Semanas Laborales del  
16 Grupo y los Períodos de Pago de PAGA (si los hubiera) asignados al Miembro del Grupo en el  
17 Aviso del Grupo. Esto también se conoce como disputa. Usted puede utilizar el formulario de  
18 Disputa de la Semana Laboral adjunto como Anexo C, para este fin, pero no es obligatorio. El  
19 Miembro del Grupo puede impugnar la asignación comunicándose con el Administrador por fax,  
20 correo electrónico o correo postal. El Administrador debe animar al Miembro del Grupo que  
21 impugna la asignación a entregar la documentación de respaldo. En falta de documentación que  
22 indique lo contrario, el Administrador tiene derecho a suponer que las Semanas Laborales que se  
23 incluyen en el Aviso del Grupo son correctas, siempre y cuando sean coherentes con los Datos  
24 del Grupo. La determinación del Administrador de la asignación de Semanas Laborales y/o  
Períodos de Pago de PAGA por parte de cada Miembro del Grupo será definitiva y no podrá  
apelarse ni impugnarse de ninguna manera. El Administrador deberá proporcionar de inmediato  
copias de todas las impugnaciones al cálculo de las Semanas Laborales y/o los Períodos de Pago  
de PAGA al Abogado de la Defensa y al Abogado del Grupo, así como la determinación del  
Administrador sobre las impugnaciones.

#### 25 8.7 Objeciones al Acuerdo.

26 8.7.1 Sólo los Miembros del Grupo Participantes pueden oponerse a los componentes de  
27 la acción de grupo del Acuerdo y/o del presente Acuerdo, incluida la impugnación de la  
imparcialidad del Acuerdo y/o los montos solicitados para el Pago de Honorarios del Abogado

1 del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y/o el Pago de Servicios de  
2 Representante del Grupo.

3 8.7.2 Los Miembros del Grupo Participantes pueden enviar objeciones por escrito  
4 al Administrador, por fax, correo electrónico o correo postal. Como alternativa, los Miembros  
5 del Grupo Participantes pueden comparecer en el Tribunal (o contratar a un abogado para que  
6 comparezca en el Tribunal) para presentar objeciones verbales en la Audiencia de Aprobación  
7 Final. Un Miembro del Grupo Participante que decida enviar una objeción por escrito al  
8 Administrador debe hacerlo en un plazo máximo de 60 días después de la fecha de envío por  
9 correo del Paquete de Aviso por parte del Administrador (más 14 días adicionales para los  
10 Miembros del Grupo cuyo Paquete de Aviso se haya vuelto a enviar por correo). Usted puede  
11 utilizar el formulario de Objeción adjunto como Anexo D, para este fin, pero no es obligatorio.

12 8.7.3 Los Miembros del Grupo No Participantes no tienen derecho a oponerse a  
13 ninguno de los componentes de la acción de grupo del Acuerdo.

14 8.8 Obligaciones del Administrador. El Administrador tiene la obligación de realizar y  
15 cumplir todas las tareas que le correspondan según lo establecido en el en el presente Acuerdo o  
16 en cualquier otro documento.

17 8.8.1 Sitio web, dirección de correo electrónico y número gratuito. El  
18 Administrador creará, mantendrá y utilizará un sitio web de Internet para publicar información  
19 de interés para los Miembros del Grupo, incluida la fecha, la hora y el lugar de la Audiencia de  
20 Aprobación Final y copias del Acuerdo de Liquidación, la Moción para la Aprobación  
21 Preliminar, la Aprobación Preliminar, el Paquete de Aviso, la Moción para la Aprobación Final,  
22 la Moción para el Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del  
23 Abogado del Grupo y Pago de Servicios de Representante del Grupo, la Aprobación Final y la  
24 Sentencia. El Administrador también mantendrá y supervisará una dirección de correo  
25 electrónico y un número de teléfono gratuito para recibir llamadas, faxes y correos electrónicos  
26 de los Miembros del Grupo.

27 8.8.2 Solicitudes de Exclusión (exclusión voluntaria) y lista de exclusión. El  
28 Administrador revisará oportunamente y de manera continua las Solicitudes de Exclusión para  
determinar su validez. En un plazo máximo de cinco (5) días después del vencimiento de la fecha  
límite para enviar las Solicitudes de Exclusión, el Administrador enviará por correo electrónico  
una lista al Abogado del Grupo y al Abogado de la Defensa que incluya (a) los nombres y otra  
información identificativa de los Miembros del Grupo que hayan entregado oportunamente  
Solicitudes de Exclusión válidas (“Lista de Exclusión”); (b) los nombres y otra información  
identificativa de los Miembros del Grupo que hayan entregado Solicitudes de Exclusión no  
válidas; (c) copias de todas las Solicitudes de Exclusión del Acuerdo enviadas (ya sean válidas o  
no válidas).

8.8.3 Informes semanales. El Administrador deberá proporcionar semanalmente  
informes por escrito al Abogado del Grupo y al Abogado de la Defensa en los que, entre otras  
cosas, se contabilice el número de: Paquetes de Aviso enviados por correo o reenviados por

1 correo, Paquetes de Aviso devueltos por no haberse podido entregar, Solicitudes de Exclusión  
2 (válidas o no válidas) recibidas, objeciones recibidas, impugnaciones de Semanas Laborales y/o  
3 Períodos de Pago de PAGA recibidas y/o resueltas, y cheques enviados por correo para los Pagos  
4 Individuales del Grupo y los Pagos Individuales de PAGA (“Informe Semanal”). Los Informes  
5 Semanales deben incluir la evaluación del Administrador de la validez de las Solicitudes de  
Exclusión y adjuntar copias de todas las Solicitudes de Exclusión y objeciones recibidas.

6 8.8.4 Impugnaciones de la Semana Laboral y/o del Período de Pago. El  
7 Administrador tiene la facultad de abordar y tomar decisiones finales, de conformidad con los  
8 términos de este Acuerdo, en cuanto a todas las impugnaciones de los Miembros del Grupo  
relacionadas con el cálculo de las Semanas Laborales y/o los Períodos de Pago. La decisión del  
Administrador será definitiva y no podrá ser objeto de apelación ni de impugnación.

9 8.8.5 Declaración del Administrador. En un plazo máximo de 14 días antes de la  
10 fecha en que la Demandante debe presentar la Moción para la Aprobación Final del Acuerdo, el  
11 Administrador proporcionará al Abogado del Grupo y al Abogado de la Defensa, una declaración  
12 firmada que pueda presentarse ante el Tribunal y que certifique su debida diligencia y el  
13 cumplimiento de todas sus obligaciones conforme al presente Acuerdo, incluyendo, entre otras  
14 cosas, el envío por correo postal de los Paquetes de Aviso, los Paquetes de Aviso devueltos por  
15 no haberse podido entregar, el reenvío de los Paquetes de Aviso, los intentos de localizar a los  
16 Miembros del Grupo, el número total de Solicitudes de Exclusión del Acuerdo recibidas (tanto  
válidas como no válidas), el número de objeciones por escrito y adjuntará la lista de exclusiones.  
El Administrador complementará su declaración según sea necesario o según lo soliciten las  
Partes y/o el Tribunal. El Abogado del Grupo se encargará de presentar la declaración(es) del  
Administrador ante el Tribunal.

17 8.8.6 Informe Final del Administrador. En un plazo de 10 días después de que el  
18 Administrador haya desembolsado todos los fondos del Monto Bruto del Acuerdo, el  
19 Administrador proporcionará al Abogado del Grupo y al Abogado de la Defensa un informe final  
20 en el que se detallarán los desembolsos, únicamente por número de identificación de empleado,  
21 de todos los pagos realizados conforme al presente Acuerdo. Al menos 15 días antes de cualquier  
22 fecha límite establecida por el Tribunal, el Administrador preparará y entregará al Abogado del  
23 Grupo y al Abogado de la Defensa una declaración firmada que pueda presentarse ante el  
Tribunal y que certifique el desembolso de todos los pagos requeridos conforme al presente  
Acuerdo. El Abogado del Grupo es responsable de presentar la declaración del Administrador  
ante el Tribunal.

24 **9. ESTIMACIONES DE SEMANAS LABORALES y CLÁUSULA DE AJUSTE.**  
25 Basándose en sus registros, el Demandado estima que, a la fecha del presente Acuerdo de  
26 Liquidación, hay un total de 48,777 Semanas Laborales al 19 de marzo de 2025 (es decir, a la  
27 fecha en que las Partes participaron en la mediación). Si el número de Semanas Laborales a la

1 fecha en que el Tribunal apruebe el acuerdo supera las 48,777 Semanas Laborales referenciadas  
2 en más de un 10.00%, el Monto Bruto del Acuerdo, incluido el Pago de Honorarios del Abogado  
3 del Grupo, el Pago de Servicios de Representante del Grupo y el Pago de la LWDA, aumentará  
4 proporcionalmente de acuerdo con el número de Semanas Laborales adicionales. Como  
5 alternativa, el Demandado puede optar por finalizar el Período del Grupo y el Período de PAGA  
6 en una fecha anterior, a discreción del Demandado, con el fin de limitar las Semanas Laborales  
7 cubiertas a no más del 110% de las estimaciones del Demandado (“Fecha de Finalización  
8 Alternativa”). El Demandado y el Abogado de la Defensa cooperarán con el Abogado del Grupo  
9 para proporcionar oportunamente información antes de la Audiencia de Aprobación Preliminar  
10 sobre si la cláusula de ajuste se ha activado y, si procede, si el Demandado opta por acortar el  
11 Período del Grupo y el Período de PAGA de conformidad con este párrafo.

12 **10. DERECHO DEL DEMANDADO A RETIRARSE.** Si el número de Solicitudes de  
13 Exclusión válidas identificadas en la Lista de Exclusión supera el 10.00% del total de todos los  
14 Miembros del Grupo, el Demandado puede, pero no está obligado, optar por retirarse del  
15 Acuerdo. Las Partes acuerdan que, si el Demandado se retira, el Acuerdo será nulo *ab initio*, no  
16 tendrá validez ni efecto alguno, y ninguna de las Partes tendrá ninguna obligación adicional para  
17 cumplir con este Acuerdo; sin embargo, el Demandado siga siendo responsable de pagar todos  
18 los Gastos de Administración del Acuerdo incurridos hasta ese momento. El Demandado debe  
19 notificar al Abogado del Grupo y al Tribunal su decisión de retirarse en un plazo máximo de siete  
20 (7) días después de que el Administrador envíe la Lista de Exclusión final al Abogado de la  
21 Defensa; las decisiones tardías no tendrán efecto alguno.

22 **11. MOCIÓN PARA LA APROBACIÓN FINAL.** En un plazo máximo de 16 días hábiles  
23 antes de la Audiencia de Aprobación Final programada, la Demandante presentará ante el  
24 Tribunal, una moción para la aprobación final del Acuerdo que incluye una solicitud de  
25 aprobación del acuerdo PAGA de conformidad con la sección 2699, subdivisión (l) del Código  
26 Laboral, una propuesta de la Orden de Aprobación Final y una propuesta de la Sentencia  
27 (colectivamente, “Moción para la Aprobación Final”). La Demandante proporcionará  
28 redacciones de estos documentos al Abogado de la Defensa antes de presentar la Moción para la  
Aprobación Final. El Abogado del Grupo y el Abogado de la Defensa se reunirán y consultarán  
con prontitud, en persona o por teléfono, y de buena fe, para resolver cualquier desacuerdo  
relacionado con la Moción para la Aprobación Final.

11.1 Respuesta a las Objeciones. Cada una de las Partes se reserva el derecho de  
responder a cualquier objeción planteada por un Miembro del Grupo Participante, incluido el

1 derecho a presentar documentos de respuesta ante el Tribunal en un plazo máximo de cinco (5)  
2 días hábiles antes de la Audiencia de Aprobación Final, o según lo ordene o acepte el Tribunal.

3 11.2 Obligación de cooperación. Si el Tribunal no concede la Aprobación Final o  
4 condiciona la Aprobación Final sobre cualquier cambio sustancial en el Acuerdo (incluido, entre  
5 otros, el alcance de la exoneración que otorgarán los Miembros del Grupo), las Partes trabajarán  
6 con prontitud y de buena fe para abordar las preocupaciones del Tribunal, revisando el Acuerdo  
7 según sea necesario para obtener la Aprobación Final. La decisión del Tribunal de otorgar menos  
8 de los montos solicitados para el Pago de Servicios de Representante del Grupo, el Pago de  
9 Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y/o el  
10 Pago de Gastos del Administrador no constituirán una modificación sustancial del Acuerdo según  
11 lo establecido en este párrafo.

12 11.3 Jurisdicción continua del Tribunal. Las Partes acuerdan que, después de la emisión  
13 de la Sentencia, el Tribunal conservará su jurisdicción sobre las Partes, la Acción y el Acuerdo  
14 únicamente con el fin de (i) hacer cumplir el presente Acuerdo y/o la Sentencia, (ii) abordar los  
15 asuntos relacionados con la administración del acuerdo y (iii) abordar los asuntos posteriores a  
16 la Sentencia que permita la ley.

17 11.4 Renuncia al Derecho de Apelación. Siempre que la Sentencia sea conforme a los  
18 términos y condiciones del presente Acuerdo, incluyendo específicamente el Pago de Honorarios  
19 del Abogado del Grupo y el Pago de Gastos de Litigio del Abogado del Grupo establecido en el  
20 presente Acuerdo, las Partes, sus respectivos abogados, y todos los Miembros del Grupo  
21 Participantes que no se opusieron al Acuerdo según lo dispuesto en este Acuerdo, renuncia a  
22 todos los derechos de apelación de la Sentencia, incluidos todos los derechos a procedimientos  
23 posteriores a la sentencia y apelaciones, el derecho a presentar mociones para anular la sentencia,  
24 mociones para un nuevo juicio, escritos extraordinarios, y apelaciones. La renuncia al derecho de  
25 apelación no incluye ninguna renuncia al derecho a oponerse a dichas mociones, órdenes  
26 judiciales o apelaciones. Si un objetante apela la Sentencia, las obligaciones de las Partes de  
27 conformidad con el presente Acuerdo se suspenderán hasta el momento en que se resuelva  
28 definitivamente la apelación y la Sentencia sean definitivas, excepto en asuntos que no afecten  
la cantidad del Monto Neto del Acuerdo.

11.5 Órdenes del Tribunal de Apelación para Anular, Revocar o Modificar  
sustancialmente la Sentencia. Si el Tribunal revisor anula, revoca o modifica la Sentencia de una  
manera que requiera una modificación sustancial de este Acuerdo (incluido, entre otros, el  
alcance de la exoneración que otorgarán los Miembros del Grupo), este Acuerdo será nulo y sin  
efecto. No obstante, las Partes colaborarán con diligencia y de buena fe para abordar las  
preocupaciones del tribunal de apelación y obtener la Aprobación Final y la Sentencia,

compartiendo el 50% de los gastos administrativos adicionales en que se incurra razonablemente después de la remisión. La decisión de apelación para anular, revocar o modificar la adjudicación concedida por el Tribunal a la Representante del Grupo o cualquier pago al Abogado del Grupo no constituirá una modificación sustancial de la Sentencia en el sentido de este párrafo, siempre y cuando la cantidad del Monto Bruto del Acuerdo permanezca sin cambios.

**12. SENTENCIA MODIFICADA.** Si se requiere una sentencia modificada conforme a la sección 384 del Código de Procedimiento Civil, las Partes trabajarán conjuntamente y de buena fe para entregar conjuntamente una propuesta de la sentencia modificada.

**13. DISPOSICIONES ADICIONALES.**

13.1 Sin Admisión de Responsabilidad, Certificación del Grupo o Capacidad de Gestión Representativa para Otros Fines. El presente Acuerdo representa un compromiso y un acuerdo de las reclamaciones altamente controvertidas. Nada de lo dispuesto en el presente Acuerdo pretende ni debe interpretarse como una admisión por parte del Demandado de que cualquiera de las alegaciones en la Demanda Operativa tiene fundamento o de que el Demandado tiene responsabilidad alguna por cualquiera de las reclamaciones presentadas; tampoco debe pretenderse o interpretarse como una admisión por parte de la Demandante de que las defensas del Demandado en la Acción tienen fundamento. Las Partes acuerdan que la certificación del grupo y el procedimiento representativo se aplicarán únicamente a los efectos del presente Acuerdo. Si, por cualquier motivo, el Tribunal concede la Aprobación Preliminar, la Aprobación Final o dicta la Sentencia, el Demandado se reserva el derecho a impugnar la certificación de cualquier grupo por cualquier motivo, y el Demandado se reserva todas las defensas disponibles contra las reclamaciones de la Acción, y la Demandante se reserva el derecho a solicitar la certificación del Grupo por cualquier motivo disponible y de impugnar las defensas del Demandado. La Liquidación, el presente Acuerdo y la voluntad de las Partes de resolver la Acción no tendrán efecto ni serán admisibles en relación con ningún litigio (excepto en los procedimientos para hacer cumplir o efectuar la Liquidación y el presente Acuerdo).

13.2 Confidencialidad Previa a la Aprobación Preliminar. La Demandante, el Abogado del Grupo, el Demandado y el Abogado de la Defensa acuerdan por separado que, hasta que se presente la Moción para la Aprobación Preliminar del Acuerdo, ellos y cada uno de ellos no divulgarán, difundirán ni publicarán, ni harán ni permitirán que otra persona divulgue, difunda o publique ninguno de los términos del Acuerdo directa o indirectamente, de manera específica o general, a ninguna persona, corporación, asociación, agencia gubernamental u otra entidad excepto: (1) a los abogados, contables o cónyuges de las Partes, a quienes se les instruirá que



1 mantengan la confidencialidad de este Acuerdo; (2) a los abogados en un asunto relacionado; (3)  
2 en la medida necesaria para informar de ingresos a las autoridades fiscales correspondientes; (4)  
3 en respuesta a una orden o citación judiciales; o (5) en respuesta a una investigación o citación  
emitida por una agencia gubernamental estatal o federal.

4 Cada una de las Partes se compromete a notificar inmediatamente a la otra Parte de  
5 cualquier orden judicial o administrativa, investigación o citación que solicite dicha información.  
6 La Demandante, el Abogado del Grupo, el Demandado y el Abogado de la Defensa acuerdan por  
7 separado no iniciar, directa o indirectamente, ninguna conversación u otra comunicación, antes  
8 de la presentación de la Moción para la Aprobación Preliminar, con terceros en relación con este  
9 Acuerdo o los asuntos que dan lugar a este Acuerdo, excepto para responder únicamente que “el  
10 asunto se ha resuelto” o palabras en ese sentido. Este párrafo no restringe las comunicaciones de  
los Abogados del Grupo con los Miembros del Grupo de conformidad con las obligaciones éticas  
de los Abogados del Grupo con respecto a los Miembros del Grupo.

11 13.3 Prohibición de captación. Las Partes acuerdan por separado que ellas y sus  
12 respectivos abogados y empleados no captarán a ningún Miembro del Grupo que opte por  
13 excluirse u oponerse al Acuerdo, ni que apele la Sentencia. Nada de lo dispuesto en este párrafo  
14 se interpretará como una restricción de la capacidad de los Abogados del Grupo para comunicarse  
15 con los Miembros del Grupo de conformidad con las obligaciones éticas de los Abogados del  
Grupo tienen con los Miembros del Grupo.

16 13.4 Acuerdo Integrado. Una vez firmado por todas las Partes y sus abogados, el presente  
17 Acuerdo, junto con sus anexos adjuntos, constituirá el acuerdo completo entre las Partes en  
18 relación con el Acuerdo, y sustituirá a todas y cada una de las declaraciones orales, garantías,  
pactos o incentivos verbales realizados a o por cualquiera de las Partes.

19 13.5 Autorización del Abogado. El Abogado del Grupo y el Abogado de la Defensa  
20 garantizan y declaran por separado que están autorizados por la Demandante y el Demandado,  
21 respectivamente, a tomar todas las medidas apropiadas requeridas o permitidas por dichas Partes  
22 de conformidad con el presente Acuerdo para dar cumplimiento a sus términos, y para firmar  
cualquier otro documento que sea razonablemente necesario para dar cumplimiento a los  
23 términos del presente Acuerdo, incluidas las modificaciones al presente Acuerdo.

24 13.6 Cooperación. Las Partes y sus abogados cooperarán entre sí y harán todo lo posible,  
25 de buena fe, para implementar el Acuerdo, entre otras cosas, modificando el Acuerdo de  
26 Liquidación, entregando pruebas complementarias y suplementos y fundamentos legales según  
27 lo solicite el Tribunal. En caso de que las Partes no puedan acordar la forma o el contenido de  
cualquier documento necesario para implementar el Acuerdo, o sobre cualquier

modificación del Acuerdo que pueda ser necesaria para implementar el Acuerdo, las Partes solicitarán la asistencia de un mediador y/o del Tribunal para su resolución.

13.7 Sin Cesiones Previas. Las Partes declaran y garantizan por separado que no han cedido, transferido, gravado ni pretendido ceder, transferir o gravar directa o indirectamente a ninguna persona o entidad, ninguna parte de la responsabilidad, reclamación, demanda, acción, causa de acción o derecho liberado y exonerado por una de las Partes en el presente Acuerdo.

13.8 Sin Asesoramiento Fiscal. Ni la Demandante, ni el Abogado del Grupo, ni el Demandado, ni el Abogado de la Defensa proporcionan ningún asesoramiento con respecto a impuestos o tributación, ni se podrá considerar nada de lo dispuesto en este Acuerdo constituya tal asesoramiento en el sentido de la Circular 230 del Departamento del Tesoro de los Estados Unidos (31 CFR Parte 10, en su versión modificada) ni en ningún otro sentido.

13.9 Modificación del Acuerdo. El presente Acuerdo, y todas sus partes, únicamente podrá ser enmendado, modificado, cambiado o renunciado mediante un instrumento expreso por escrito y firmado por todas las Partes o sus representantes, y aprobado por el Tribunal.

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

13.11 Ley aplicable. Todos los términos y condiciones de este Acuerdo y sus anexos se regirán e interpretarán de conformidad con las leyes internas del estado de California, sin tener en cuenta los principios de conflicto de leyes.

13.12 Cooperación en la redacción. Las Partes han cooperado en la redacción y preparación del presente Acuerdo. El presente Acuerdo no se interpretará en contra ninguna de las Partes por el hecho de que haya sido la parte redactora o que haya participado en la redacción.

13.13 Confidencialidad. En la medida en que lo permita la ley, todos los acuerdos celebrados y las órdenes introducidas durante la Acción y en el presente Acuerdo en relación con la confidencialidad de la información seguirán vigentes una vez firmado el presente Acuerdo.

13.14 Uso y Devolución de los Datos del Grupo. La información proporcionada al Abogado del Grupo de conformidad con el Código de Evidencia de California §1152, y todas las copias y resúmenes de los Datos del Grupo proporcionados al Abogado del Grupo por el Demandado en relación con la mediación, otras negociaciones de liquidación, o en relación con el Acuerdo, sólo podrán utilizarse en relación con este Acuerdo, y para ningún otro propósito, y no podrán utilizarse de ninguna manera que viole cualquier acuerdo contractual, estatuto o norma del tribunal existentes. En un plazo máximo de 90 días después de la fecha en que el Tribunal exima al Administrador de la obligación de proporcionar una Declaración que confirme el pago final de todos los fondos del Acuerdo, la Demandante destruirá todas las versiones impresas y

1 electrónicas de los Datos del Grupo recibidos del Demandado a menos que, antes de que el  
2 Tribunal exima al Administrador de su obligación, el Demandado solicite por escrito al Abogado  
3 del Grupo la devolución, en lugar de la destrucción de los Datos del Grupo.

4 13.15 Encabezados. Los encabezados descriptivos de cualquier sección o párrafo de este  
5 Acuerdo se incluyen únicamente para facilitar la referencia y no constituye parte de este Acuerdo.

6 13.16 Días naturales. A menos que se indique lo contrario, toda referencia a “días” en  
7 este Acuerdo será a días naturales. En el caso de que cualquier fecha o fecha límite establecida  
8 en este Acuerdo caiga en un fin de semana o día feriado legal federal, dicha fecha o fecha límite  
9 será el primer día hábil posterior.

10 13.17 Notificaciones. Todas las notificaciones, requerimientos u otras comunicaciones  
11 entre las Partes en relación con el presente Acuerdo se realizarán por escrito y se considerarán  
12 debidamente entregadas al tercer día hábil después del envío por correo postal de los Estados  
13 Unidos, o el día de su envío por correo electrónico o mensajería, dirigidas a las siguientes  
14 direcciones:

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

22 Para la parte Demandada:  
23 LANDEGGER VERANO, ALC  
24 15760 Ventura Boulevard, Suite 1200  
25 Encino, California 91436  
26 [alfred@landeggeresq.com](mailto:alfred@landeggeresq.com)  
27 [evelyn@landeggeresq.com](mailto:evelyn@landeggeresq.com)  
28 [joseph@landeggeresq.com](mailto:joseph@landeggeresq.com)

13.18 Firma en copias. El presente Acuerdo podrá firmarse en una o varias copias por  
fax, electrónicamente (es decir, DocuSign) o por correo electrónico las cuales, a los efectos del  
presente Acuerdo, se considerarán como originales. Todas las copias y cada una de ellas se

considerarán un único y mismo documento si los abogados de las Partes intercambian las copias firmadas. Cualquier copia firmada será admisible como prueba para demostrar la existencia y el contenido de este Acuerdo.

13.19 Suspensión del Litigio. Las Partes acuerdan que, después de firmar el presente Acuerdo, se suspenderá el litigio, excepto para dar cumplimiento a los términos del presente Acuerdo. Las Partes acuerdan además que, después de firmar el presente Acuerdo, que de conformidad con la sección 583.330 del Código de Procedimiento Civil (CCP), se ampliará la fecha para llevar el caso a juicio en virtud de la sección 583.310 del CCP durante todo el período del proceso de liquidación.

Fecha: 03 / 09 / 2026, 2025 Por: M. Huerta  
MARIA DE LA LUNA HUERTA  
Maria de la luz Huerta

Fecha: \_\_\_\_\_, 2025 Por: \_\_\_\_\_  
NEVILLE KADIMI  
Director Financiero  
Diamond Wipes International, Inc.

THE SPIVAK LAW FIRM

Fecha: \_\_\_\_\_, 2025 Por: \_\_\_\_\_  
DAVID GLENN SPIVAK, Abogado de  
la Demandante, MARIA DE LA LUNA  
HUERTA, y de todas las demás  
personas en situación similar

BENOWITZ LAW CORPORATION

Fecha: \_\_\_\_\_, 2025 Por: \_\_\_\_\_  
LOUIS M. BENOWITZ, Abogados de  
la Demandante, MARIA DE LA LUNA  
HUERTA, y de todas las demás  
personas en situación similar

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LANDEGGER VERANO & DAVIS, ALC

Fecha: \_\_\_\_\_, 2025

Por: \_\_\_\_\_  
ALFRED J. LANDEGGER  
JOSEPH P. SKLAR,  
Abogados del Demandado  
DIAMOND WIPES  
INTERNATIONAL, INC.

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**EXHIBIT A**

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

(case name: *Margarita Perez, et al. v. Workforce Personnel, Inc.* and number CIVSB2220822)

***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 Diamond Wipes International, Inc. (“Defendant”) for alleged violations of California’s labor laws. The Action was filed by one of former employees of Defendant. Maria De La Luna Huerta (“Plaintiff” or “Huerta”) later joined the Action as a named-plaintiff. It seeks payment of (1) wages and other relief for a class of all individuals Defendant Diamond Wipes International, Inc. employed directly at its Chino location as hourly, non-exempt employees during the Class Period of July 25, 2019 to \_\_\_\_\_ <<the date of preliminary approval of this Settlement or the Alternate End Date>> (“Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all individuals Defendant Diamond Wipes International, Inc. employed directly at its Chino location as hourly, non-exempt employees during the PAGA Period of September 7, 2021 to \_\_\_\_\_ <<the date of preliminary approval of this Settlement or the Alternate End Date>> (“Aggrieved Employees”).

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Work Week is <<\$Increment type value>> and a PAGA 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 Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period. The individual payment 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 an Aggrieved Employee 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 an Aggrieved Employee is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

The above estimates are based on Defendant’s records showing that **you worked <<\_\_>> Work Weeks** during the Class Period and **you worked <<\_\_>> Pay Periods** during

1 the PAGA Period. If you believe that you worked more Work Weeks or Pay Periods during either  
2 period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

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

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

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

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

## **SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|                                                                       |                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Don't Have to Do Anything to Participate in the Settlement</b> | 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 Defendant that are covered by this Settlement (Released Claims). |
|-----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



|                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b></p> <p><b>The Opt-out Deadline is &lt;&lt;RESPONSE DEADLINE&gt;&gt;</b></p>                                        | <p>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.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).</p> |
| <p><b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b></p> <p><b>Written Objections Must be Submitted by &lt;&lt;RESPONSE DEADLINE&gt;&gt;</b></p> | <p>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.</p>                           |
| <p><b>You Can Participate in the &lt;&lt;FinalApprovalHearingDate&gt;&gt; Final Approval Hearing</b></p>                                                                                         | <p>The Court's Final Approval Hearing is scheduled to take place on &lt;&lt;FinalApprovalHearingDate&gt;&gt;. 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.</p>                                                                                                                                                                                                                                                           |
| <p><b>You Can Challenge the Calculation of Your Work Week / Pay Periods</b></p> <p><b>Written Challenges Must be Submitted by &lt;&lt;RESPONSE DEADLINE&gt;&gt;</b></p>                          | <p>The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Work Weeks 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 Work Weeks and number of PAGA Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by &lt;&lt;RESPONSE DEADLINE&gt;&gt;. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.</p>                                                                                                                                          |

**1. WHAT IS THE ACTION ABOUT?**

1 Huerta is a former employee of Defendant. The Action accuses Defendant of violating California  
2 labor laws by failure to pay wages, unauthorized and unlawful wage deductions, failure to provide  
3 meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements,  
4 failure to indemnify for business expenses, failure to timely pay wages, and related violations of  
5 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 Louis  
M. Benowitz of Benowitz Law Corporation (“Class Counsel.”)

6 Defendant strongly denies violating any laws or failing to pay any wages and contends it complied  
7 with all applicable laws.

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

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

15 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they  
16 believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering  
17 the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement  
18 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 whether to grant Final Approval of the Settlement.

## 19 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

20 A. Gross Settlement Amount. Defendant Will Pay \$595,079.40 as the Gross  
21 Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement  
22 into an account controlled by the Administrator of the Settlement. The Administrator will use the  
23 Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class  
24 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  
25 Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will  
26 fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become  
27

1 final. The Judgment will be final on the date the Court enters Judgment, or a later date if  
2 Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

7 1. Attorney Fees and Costs. Up to \$198,359.80 (1/3 of the Gross Settlement  
8 Amount) to Class Counsel for attorneys' fees and up to \$15,000.00 for their litigation expenses.  
9 To date, Class Counsel have worked and incurred expenses on the Action without payment.

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

14 3. Administration Expenses. Up to \$10,000.00 to the Administrator for  
15 services administering the Settlement.

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

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

21 Based on its records, Defendant estimated that, as of March 19, 2025 (i.e., as of the date  
22 the Parties participated in mediation), there were 48,777 total Work Weeks during the Class  
23 period. If the Work Weeks as of the date the Court approves the Settlement exceeds the referenced  
24 48,777 Work Weeks by more than 10.00%, the Gross Settlement Amount, including the Class  
25 Counsel Fees Payment, the Class Representative Service Payment, and the LWDA payment,  
26 would increase proportionally according to the number of additional Work Weeks. In the  
27 alternative, Defendant had the option to elect to end the Class Period and PAGA period on an  
28 earlier date at its discretion in order to limit the covered Work Weeks to no more than the 110%  
of Defendant's estimates. According to Defendant's records, the number of additional Work  
Weeks or Class Members <<did or did not>> exceed Defendant's estimates by more than 10%.  
Based thereon, Defendant has elected <<an Alternate End Date of \_\_\_\_\_ or \_\_\_\_\_, the date  
the Court approved the settlement>> as the Class Period and PAGA Period end date, <<which  
does or which does not>> result in an increase to the Gross Settlement Amount.

C. Net Settlement Distributed to Class Members. After making the above deductions  
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  
Members based on their Class Period Work Weeks.

1           D.     Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking  
2 the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages  
3 (“Wage Portion”) and 66.67% to interest and penalties (“Non-Wage Portion.”). The Wage Portion  
4 is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay  
5 employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted  
6 as penalties rather than wages for tax purposes. The Administrator will report the Individual  
7 PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099  
8 Forms.

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

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

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

22           F.     Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated  
23 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the  
24 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.  
25 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request  
26 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for  
27 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class  
28 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  
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  
pursue claims against Defendant for violations of California’s labor laws.

          You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude  
themselves from the Class Settlement (Non-Participating Class Members) who are Aggrieved  
Employees remain eligible for Individual PAGA Payments and are required to give up their right  
to assert PAGA claims against Defendants based on the PAGA claims alleged in the Action.

          G.     The Proposed Settlement Will be Void if the Court Denies Final Approval. It is  
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

1 and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not  
2 pay any money and Class Members will not release any claims against Defendant.

3 H. Administrator. The Court has appointed a neutral company, Apex Class Action  
4 (the “Administrator”) to send this Notice, calculate and make payments, and process Class  
5 Members’ Requests for Exclusion. The Administrator will also decide Class Member disputes  
6 over Work Weeks, mail and re-mail settlement checks and tax forms, and perform other tasks  
7 necessary to administer the Settlement. The Administrator’s contact information is contained in  
8 Section 9 of this Notice.

9 I. Participating Class Members’ Release. After the Judgment is final and Defendant  
10 has fully funded the Gross Settlement (and separately paid all employer payroll taxes),  
11 Participating Class Members will be legally barred from asserting any of the claims released under  
12 the Settlement. This means that unless you opted out by validly excluding yourself from the Class  
13 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or  
14 its officers, directors, owners, attorneys, insurers, employees, and agents for wages based on the  
15 Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and  
16 resolved by this Settlement.

17 The Participating Class Members will be bound by the release of the following  
18 “Released Class Claims”:

19 Release by Participating Class Members: All Participating Class Members,  
20 on behalf of themselves and their respective former and present representatives,  
21 agents, attorneys, heirs, administrators, successors, and assigns, release Released  
22 Parties from all claims that were alleged, or reasonably could have been alleged,  
23 based on facts set forth in the Operative Complaint that arose during the Class  
24 Period including, e.g., claims for: (a) failure to pay all wages earned for all hours  
25 worked and other compensable hours at the correct rates of pay, including for off-  
26 the-clock work, hours improperly deducted, minimum wages, regular wages,  
27 overtime wages, and doubletime wages; (b) failure to provide rest breaks or  
28 compensation in lieu thereof; (c) failure to provide compliant meal periods or  
compensation in lieu thereof; (d) failure to reimburse for necessary business-  
related expenses; (e) failure to provide accurate and complete itemized wage  
statements and maintain payroll records; (f) failure to timely pay all wages due  
during employment and upon separation of employment; and (g) claims for unfair  
competition. (“Released Class Claims”). Except for Plaintiff’s Release by Plaintiff  
and 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. This release does not apply to Defendant  
Workforce Personnel, Inc., or any of its officers, directors, employees or agents.

The “Released Parties” means: Defendant and each of its former and present  
officers, directors, owners, attorneys, insurers, employees and agents

1 J. The PAGA Release. After the Court’s judgment is final, and Defendant has paid  
2 the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved  
3 Employees will be barred from asserting any of the “Released PAGA Claims” against Defendants,  
4 whether or not they exclude themselves from the Settlement. This means that all Aggrieved  
5 Employees, including those who are Participating Class Members and those who opt-out of the  
6 Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against the  
7 Release Parties based on the PAGA claims alleged in the Action and resolved by this Settlement.

8 The Aggrieved Employees will be bound by the release of the following “Released PAGA  
9 Claims”:

10 All Aggrieved Employees are deemed to release, on behalf of themselves and their  
11 respective former and present representatives, agents, attorneys, heirs, administrators,  
12 successors, and assigns, the Released Parties from all claims for PAGA penalties that were  
13 alleged, or reasonably could have been alleged, based on the facts set forth in the  
14 Operative Complaint and the PAGA Notice that arose during the PAGA Period including,  
15 e.g., claims for: (a) failure to pay all wages earned for all hours worked and other  
16 compensable hours at the correct rates of pay, including for off-the-clock work, hours  
17 improperly deducted, minimum wages, regular wages, overtime wages, and doubletime  
18 wages; (b) failure to provide compliant rest breaks or compensation in lieu thereof; (c)  
19 failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to  
20 reimburse for necessary business-related expenses; (e) failure to provide accurate and  
21 complete itemized wage statements and maintain payroll records; (f) failure to timely pay  
22 all wages due during employment and upon separation of employment; and (g) claims for  
23 unfair competition. (“Released PAGA Claims”). The foregoing release shall be binding  
24 on Plaintiff, the Aggrieved Employees, and the State of California, and shall bar by res  
25 judicata any claim under the PAGA brought by any person, including the Aggrieved  
26 Employees, on behalf of the State of California, as to any claims predicated on the  
27 Released PAGA Claims. Aggrieved Employees do not release claims for wages or  
28 damages unless such Aggrieved Employee is a Participating Class Member. This release  
does not apply to Defendant Workforce Personnel, Inc., or any of its officers, directors,  
employees or agents.

#### 4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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

25 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA  
26 Payments by (a) dividing \$1,250.00 by the total number of PAGA Pay Periods worked by all  
27 Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked  
28 by each individual Aggrieved Employee.



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

8 You need to support your challenge by submitting copies of pay stubs or other records.  
9 The Administrator will accept Defendant's calculation of Work Weeks and/or PAGA Pay Periods  
10 based on Defendant's records as accurate unless you send copies of records containing contrary  
11 information. You should send copies rather than originals because the documents will not be  
12 returned to you. The Administrator will resolve Work Week and/or Pay Period challenges based  
13 on your submission and on input from Class Counsel (who will advocate on behalf of  
14 Participating Class Members) and Defendant's Counsel. The Administrator's decision is final.  
15 You can't appeal or otherwise challenge its final decision.

## 16 **5. HOW WILL I GET PAID?**

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

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

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

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

28 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 *Margarita Perez, et al. vs.*  
*Workforce Personnel, Inc.*, Case No. CIVSB2220822, 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 Defendant are asking the Court to approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Class Representative Service Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's website <<COURT WEBSITE>>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Class Representative Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Margarita Perez vs. Workforce Personnel, Inc.*, case no. CIVSB2220822, and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information. You may use the enclosed Objection form for this purpose. You should send your objection to the Administrator by email, fax, or send by regular U.S. mail.

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

## 8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department 17 of the San Bernardino Superior Court, located at San Bernardino District – Civil Division, 247 West Third Street, Dept. S17, San Bernardino, CA 92415-0210. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>



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

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

## 9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<< COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. CIVSB2220822 . You can also make an appointment to personally review court documents in the Clerk's Office at the San Bernardino District – Civil Division by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

### Class Counsel:

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

### Administrator:

|                  |                   |
|------------------|-------------------|
| Name of Company: | Apex Class Action |
| Email Address:   | —                 |
| Mailing Address: | —                 |
| Telephone:       | —                 |
| Fax Number:      | —                 |

## 10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

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

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

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

1                                    *Margarita Perez, et al. v. Workforce Personnel, Inc., et al.*  
2                                    **Superior Court of the State of California, County of San Bernardino**  
                                         Case No. CIVSB2220822

3                                    **ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM**

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

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

9                                    *Margarita Perez, et al. v. Workforce Personnel, Inc. Class Action Administrator*

10                                    c/o \_\_\_\_

11                                    \_\_\_\_

12                                    \_\_\_\_

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

19                                    \_\_\_\_  
20                                    (Typed or Printed Name)

21                                    \_\_\_\_  
22                                    (Address)

23                                    \_\_\_\_  
24                                    (City, State, Zip Code)

25                                    \_\_\_\_  
26                                    (Telephone Number, Including Area Code)

27                                    \_\_\_\_  
28                                    (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 \_\_\_\_.

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**EXHIBIT C**

1 **WORK WEEK/PAGA PAY PERIOD DISPUTE FORM**

2 Superior Court of The State of California  
3 For The County of San Bernardino  
4 *Margarita Perez, et al. v. Workforce Personnel, Inc.*, Case No. CIVSB2220822

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

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

9 XX – XX –

10 The amount of your estimated Settlement Award is based upon the number of eligible Work  
11 Weeks you worked between July 25, 2019 and <<the date the Court preliminarily approves this  
12 class action settlement or the Alternate End Date>> and eligible PAGA Pay Periods you worked  
13 between September 7, 2021 and <<the date the Court preliminarily approves this class action  
14 settlement or the Alternate End Date>>. “Work Week” means any week during which a Class  
15 Member worked for Defendant or any other Released Party for at least one day, during the Class  
16 Period. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked  
17 for Defendant or any other Released Party for at least one day during the PAGA Period. The  
18 number of Work Weeks and PAGA Pay Periods applicable to your claim are set forth below.

19 **YOUR ELIGIBLE WORK WEEKS/ PAGA PAY PERIODS**

20 Defendant’s records indicate that you worked <<number of Workweeks>> Workweeks between  
21 July 25, 2019 and <<the date the Court preliminarily approves this class action settlement or the  
22 Alternate End Date>> and <<number of PAGA Pay Periods>> PAGA Pay Periods between  
23 September 7, 2021 through <<the date the Court preliminarily approves this class action  
24 settlement or the Alternate End Date>>.

25 **YOUR ESTIMATED SETTLEMENT AWARDS AND DISPUTE PROCEDURE**

26 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment  
27 in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable  
28 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 Work Weeks of PAGA Pay Periods 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 a postmark or delivery service date stamp). You may use  
this Work Weeks/PAGA Pay Periods Dispute form for this purpose. You must also send any

1 documents or other information that you contend supports your belief that the information set  
2 forth above is incorrect. You should send copies rather than originals because the documents will  
3 not be returned to you. The Administrator will resolve any dispute based upon Defendant's  
4 records and any information you provide. Please be advised that the information on this Work  
Weeks/PAGA Pay Periods Dispute Form is presumed to be correct unless the documents you  
submit are company records from Defendant.

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

1 **OBJECTION FORM**

2 ***Margarita Perez, et al. v. Workforce Personnel, Inc., et al.***  
3 **Superior Court of the State California, County of San Bernardino**  
4 **Case No. CIVSB2220822**

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

6 CPT ID: <<CPT ID>>

7 <<Name>>

8 <<Address1>>

<<Address2>>

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

CORRECT NAME AND ADDRESS HERE:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

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

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

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

26 [ ] I OBJECT to the *Margarita Perez, et al. v. Workforce Personnel, Inc., et al.* Settlement  
27 on the following grounds (if additional space necessary, please include additional sheets of  
28 paper):

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

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Executed on \_\_\_\_\_, 2025  
  
\_\_\_\_\_  
(Signature)  
  
\_\_\_\_\_  
<<Name>>  
(Printed Name)

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>>:  
  
Margarita Perez, et al. v. Workforce Personnel, Inc., et al. Administrator  
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**EXHIBIT E**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN BERNARDINO**  
**(UNLIMITED JURISDICTION)**

MARGARITA PEREZ and MARIA DE LA LUNA HUERTA on behalf of themselves and all others similarly situated, and the general public, and as “Aggrieved Employees” on behalf of other “Aggrieved Employees” and the State of California under the Labor Code Private Attorneys General Act of 2004,

*Plaintiff(s),*

vs.

WORKFORCE PERSONNEL, INC., California Corporation; DIAMOND WIPES INTERNATIONAL, INC., California Corporation; and DOES 1–50, inclusive,

*Defendant(s).*

Case No. CIVSB2220822

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

Action filed: September 19, 2022  
Dept: 17, The Honorable Joseph T. Ortiz

The Motion of Plaintiff Maria De La Luna Huerta (hereafter referred to as “Plaintiff” or “Huerta”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Joseph T. Ortiz presiding. The Court having considered the Motion, the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement

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

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

2. For purposes of this Preliminary Approval Order, the “Settlement Class” means all individuals Defendant Diamond Wipes International, Inc. (“Defendant”) employed directly at its Chino location as hourly, non-exempt employees during the Class Period (collectively “Class Members”). The “Class Period” shall mean the period of time from July 25, 2019, through the date of preliminary approval of this Settlement or the Alternate End Date.

3. Based on its records, Defendant estimates that, as of March 19, 2025, the date the Parties participated in mediation, there were 48,777 Total Work Weeks during the Class period. If the number of Work Weeks as of the date the Court approves the settlement exceeds the estimated 48,777 Work Weeks by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment would increase proportionally according to the number of additional Work Weeks. In the alternative, Defendant had the option to elect to end the Class Period and PAGA period on an earlier date at its discretion in order to limit the covered Work Weeks to no more than the 110% of Defendant’s estimates. According to Defendant’s records, the number of additional Work Weeks [did or did not] exceed Defendant’s estimates by more than 10%. Based thereon, Defendant has elected [an Alternate End Date of \_\_\_\_\_ or \_\_\_\_\_, the date the Court approved the settlement] as the Class Period and PAGA Period end date, [which does or which does not] result in an increase to the Gross Settlement Amount.

4. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

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

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

7. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Work Weeks, and PAGA Pay Periods in the Class Data.

8. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified

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

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

15 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law  
16 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s  
17 contact information is Alfred Landegger, Evelyn Zarraga, and Joseph P. Sklar of Landegger  
18 Verano & Davis, ALC, 15760 Ventura Boulevard, Suite 1200, Encino, California 91436.

19 11. The deadlines for Class Members’ written objections, Challenges to Work Weeks  
20 and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an additional  
21 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose  
22 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline  
23 with the re-mailed Notice Packet.

24 12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise  
25 discovers any persons who believe they should have been included in the Class Data and should  
26 have received Notice Packet, the Parties will expeditiously meet and confer in person or by  
27 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.



1 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class  
2 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet  
3 requiring them to exercise options under the Settlement Agreement not later than 14 days after  
4 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

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

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

24 15. Every Class Member who does not submit a timely and valid Request for Exclusion  
25 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all  
26 benefits and bound by all terms and conditions of the Settlement, including the Participating Class  
27 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the

1 Participating Class Member actually receives the Class Notice or objects to the Settlement.

2 16. Every Class Member who submits a valid and timely Request for Exclusion is a  
3 Non-Participating Class Member and shall not receive an Individual Class Payment or have the  
4 right to object to the class action components of the Settlement. However, all Aggrieved  
5 Employees, including those that are Non-Participating Class Members, will be deemed to release  
6 all claims for civil penalties that could have been sought by the Labor Commissioner for the  
7 violations identified in Plaintiff's pre-filing letter to the LWDA, including the Released PAGA  
8 Claims under Paragraph 6.3 of the Settlement; Aggrieved Employees do not release claims for  
9 wages or damages unless such Aggrieved Employee is a Participating Class Member.

10 17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days  
11 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members  
12 whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and/or PAGA  
13 Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a  
14 dispute. A Work Week Dispute form, attached as Exhibit C to the Settlement Agreement, may  
15 be used for this purpose but is not required. The Class Member may challenge the allocation by  
16 communicating with the Administrator via fax, email or mail. The Administrator must encourage  
17 the challenging Class Member to submit supporting documentation. In the absence of any  
18 contrary documentation, the Administrator is entitled to presume that the Work Weeks contained  
19 in the Class Notice are correct so long as they are consistent with the Class Data. The  
20 Administrator's determination of each Class Member's allocation of Work Weeks and/or PAGA  
21 Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The  
22 Administrator shall promptly provide copies of all challenges to calculation of Work Weeks  
23 and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's  
24 determination the challenges.

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

2 19. Participating Class Members may send written objections to the Administrator, by  
3 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire  
4 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A  
5 Participating Class Member who elects to send a written objection to the Administrator must do  
6 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional  
7 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached  
8 to the Settlement Agreement as Exhibit D may be used for this purpose but is not required.

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

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

21 22. The Court approves, as to form and content, the Class Notice in substantially the  
22 form attached as Exhibit A to the Settlement Agreement, the Election Not to Participate in  
23 Settlement form in substantially the form attached as Exhibit B to the Settlement Agreement, the  
24 Work Weeks Dispute form in substantially the form attached as Exhibit C to the Settlement  
25 Agreement, and the Objection form in substantially the form attached as Exhibit D to the  
26 Settlement Agreement.

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

2 24. The Court approves, for settlement purposes only, Maria De La Luna Huerta as  
3 the Class Representative.

4 25. The Court approves Apex Class Action as the Administrator.

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

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

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

11 29. A Final Approval Hearing shall be held on \_\_\_\_ at \_\_\_\_.m. in Department S17 of  
12 the Superior Court for the State of California, County of San Bernardino, located at the San  
13 Bernardino District – Civil Division, 247 West Third Street, Dept. S17, San Bernardino, CA  
14 92415-0210 to consider the fairness, adequacy and reasonableness of the proposed Settlement  
15 preliminarily approved by this Preliminary Approval Order, and to consider the application of  
16 Class Counsel for attorneys' fees and costs and the Class Representative Service Payment to the  
17 Class Representative. The notice of motion and all briefs and materials in support of the motion  
18 for final approval of class action settlement and motion for attorneys' fees and litigation costs  
19 shall be served and filed with this Court on or before \_\_\_\_\_. Plaintiff's counsel must give notice to  
20 any objecting party of any continuance of the hearing of the motion for final approval.

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

26 31. The Court expressly reserves the right to adjourn or continue the Final Approval  
27 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give

1 prompt notice of any continuance to Settlement Class Members who object to the Settlement.

2 **IT IS SO ORDERED.**

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5 **DATE**

**THE HONORABLE JOSEPH T. ORTIZ**  
**SUPERIOR COURT JUDGE**

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**EXHIBIT F**

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF SAN BERNARDINO**  
9 **(UNLIMITED JURISDICTION)**

10 MARGARITA PEREZ and MARIA DE LA  
11 LUNA HUERTA on behalf of themselves and all  
12 others similarly situated, and the general public,  
13 and as “Aggrieved Employees” on behalf of  
14 other “Aggrieved Employees” and the State of  
15 California under the Labor Code Private  
16 Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 WORKFORCE PERSONNEL, INC., California  
20 Corporation; DIAMOND WIPES  
21 INTERNATIONAL, INC., California  
22 Corporation; and DOES 1–50, inclusive,

23 *Defendant(s).*

Case No. CIVSB2220822

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

Action filed: September 19, 2022  
Dept: 17, The Honorable Joseph  
T. Ortiz

24 This matter came on for hearing on \_\_\_\_ at \_\_\_\_m. in Department S17 of the above-  
25 captioned court on Plaintiff MARIA DE LA LUNA HUERTA’s (“Plaintiff” or “Huerta”) Motion  
26 for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769,  
27 as set forth in the Joint Stipulation of Class Action Settlement and Release of Claims (the  
28 “Settlement”) filed herewith which provides for a Gross Settlement Amount (“GSA”) of up to  
\$595,079.40 in compromise of all disputed claims on behalf of all individuals Defendant

1 Diamond Wipes International, Inc. (“Defendant”) employed directly at its Chino location as  
2 hourly, non-exempt employees during the Class Period of July 25, 2019 to \_\_\_\_\_ <<the  
3 date of preliminary approval of this Settlement or the Alternate End Date>> (“Settlement Class  
4 Period”). All capitalized terms used herein shall have the same meaning as defined in the  
5 Settlement.

6 In accordance with the Court’s prior Order Granting Preliminary Approval of Class  
7 Action Settlement, Class Members have been given notice of the terms of the Settlement and the  
8 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its  
9 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,  
10 and the evidence and argument received by the Court in conjunction with the motions for  
11 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement  
12 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING  
13 DETERMINATIONS<sup>1</sup>:

14 1. The Court has jurisdiction over the subject matter of the Action and over all Parties  
15 to the Action, including all Class Members. Pursuant to this Court’s Order Granting Preliminary  
16 Approval of Class Action Settlement of \_\_\_\_, the Notice Packet was sent to each Class Member  
17 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the  
18 Settlement, their right to receive their proportional share of the Settlement, their right to request  
19 exclusion, their right to comment upon or object to the Settlement, and their right to appear in  
20 person or by counsel at the final approval hearing and be heard regarding final approval of the  
21 Settlement. Adequate periods of time were provided by each of these procedures. No member of  
22 the Settlement Class presented written objections to the proposed Settlement as part of this notice  
23 process, stated an intention to appear, or actually appeared at the final approval hearing.

24 2. For purposes of this Final Order and Judgment, the Class Members are all  
25 individuals Defendant Diamond Wipes International, Inc. (“Defendant”) employed directly at its  
26 \_\_\_\_\_

27 <sup>1</sup> A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action  
28 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference.



1 Chino location as hourly, non-exempt employees during the Class Period of July 25, 2019 to  
2 \_\_\_\_\_ <<the date of preliminary approval of this Settlement, or the Alternate End  
3 Date>> (“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 **Release of Claims.** The Parties agree that it is their intent that the resolution set forth in  
10 this Settlement will release and discharge the Released Claims by way of any further attempt, by  
11 lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each  
12 and all of the Settlement Class Members (including participation to any extent in any  
13 representative or collective action) against the Released Parties. This release will not take effect  
14 until Defendant has paid the Gross Settlement Amount in full per this Settlement Agreement.

15 **Released Class Claims.** The Participating Class Members will be bound by the release of  
16 the following “Released Class Claims”:

17 All Participating Class Members, on behalf of themselves and their respective former and  
18 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,  
19 release Released Parties from all claims that were alleged, or reasonably could have been  
20 alleged, based on facts set forth in the Operative Complaint that arose during the Class  
21 Period including, e.g., claims for: (a) failure to pay all wages earned for all hours worked  
22 and other compensable hours at the correct rates of pay, including for off-the-clock work,  
23 hours improperly deducted, minimum wages, regular wages, overtime wages, and  
24 doubletime wages; (b) failure to provide rest breaks or compensation in lieu thereof; (c)  
25 failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to  
26 reimburse for necessary business-related expenses; (e) failure to provide accurate and  
27 complete itemized wage statements and maintain payroll records; (f) failure to timely pay

1 all wages due during employment and upon separation of employment; and (g) claims for  
2 unfair competition. (“Released Class Claims”). Except for Plaintiff’s Release by Plaintiff  
3 and as set forth in Section 6.3 of this Agreement, Participating Class Members do not  
4 release any other claims, including claims for vested benefits, wrongful termination,  
5 violation of the Fair Employment and Housing Act, unemployment insurance, disability,  
6 social security, workers’ compensation, or claims based on facts occurring outside the  
7 Class Period. This release does not apply to Defendant Workforce Personnel, Inc., or any  
8 of its officers, directors, employees or agents.

9 **Released PAGA Claims:** The Aggrieved Employees will be bound by the release of the  
10 following “Released PAGA Claims”:

11 All Aggrieved Employees are deemed to release, on behalf of themselves and their  
12 respective former and present representatives, agents, attorneys, heirs, administrators,  
13 successors, and assigns, the Released Parties from all claims for PAGA penalties that were  
14 alleged, or reasonably could have been alleged, based on the facts set forth in the  
15 Operative Complaint and the PAGA Notice that arose during the PAGA Period including,  
16 e.g., claims for: (a) failure to pay all wages earned for all hours worked and other  
17 compensable hours at the correct rates of pay, including for off-the-clock work, hours  
18 improperly deducted, minimum wages, regular wages, overtime wages, and doubletime  
19 wages; (b) failure to provide compliant rest breaks or compensation in lieu thereof; (c)  
20 failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to  
21 reimburse for necessary business-related expenses; (e) failure to provide accurate and  
22 complete itemized wage statements and maintain payroll records; (f) failure to timely pay  
23 all wages due during employment and upon separation of employment; and (g) claims for  
24 unfair competition. (“Released PAGA Claims”). The foregoing release shall be binding  
25 on Plaintiff, the Aggrieved Employees, and the State of California, and shall bar by res  
26 judicata any claim under the PAGA brought by any person, including the Aggrieved  
27 Employees, on behalf of the State of California, as to any claims predicated on the

1 Released PAGA Claims. Aggrieved Employees do not release claims for wages or  
2 damages unless such Aggrieved Employee is a Participating Class Member. This release  
3 does not apply to Defendant Workforce Personnel, Inc., or any of its officers, directors,  
4 employees or agents.

5 “**Released Parties**” shall mean Defendant and each of its former and present officers,  
6 directors, owners, attorneys, insurers, employees and agents.

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

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

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

a. Class Counsel fees & costs of \$198,359.80 in attorneys' fees and \$\_\_\_\_\_ in litigation costs to Class Counsel;

b. \$5,000.00 as a Class Representative Service Payment award payable to Plaintiff Maria De La Luna Huerta for her service as a Class Representative;

c. \$10,000.00 in costs of the Administrator payable to Apex Class Action for its services as the Administrator; and

d. Payment of \$3,750.00 (75% of the \$5,000.00 PAGA Penalties) to the LWDA.

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

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

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

10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement Share check. After the expiration of the 180-day period, on Defendant's behalf, the Administrator

1 shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on  
2 the Residue at the legal rate of interest from the date of entry of the initial judgement to the  
3 California Unclaimed Property Fund.

4 11. The Parties shall file a final accounting report by \_\_\_\_\_. A non-appearance case  
5 review re submission of a final report is scheduled for \_\_\_\_\_ at \_\_\_\_\_.m. in Department S17.

6 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the  
7 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant  
8 deposits funds for distribution by the Administrator to Participating Class Members in accordance  
9 with the Settlement.

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

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

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

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

1 evidence of the settlement by Defendant to support a defense of res judicata, collateral estoppel,  
2 release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.

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

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

6  
7  
8 **DATE**

**THE HONORABLE JOSEPH T. ORTIZ**  
**SUPERIOR COURT JUDGE**

# **EXHIBIT 2**



**\*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL\***

September 7, 2022

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

Re: Margarita Martinez Perez / Workforce Personnel, Inc., et al.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Margarita Perez (hereafter “Perez” or “Complainant”) provides notice that Workforce Personnel, Inc., a California Corporation, Diamond Wipes International, Inc., a California corporation, and related entities (collectively “the Employers”) violated her rights and those of all other individuals the Employers have employed directly or indirectly or otherwise contracted with in California as non-exempt, hourly employees, including packers and individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the Employers and their agents and representatives.

At all relevant times, the Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).



### **Statement of Facts**

On approximately July 2018, the Employers began to employ Perez in Chino in the position of hourly, non-exempt packer. The Employers continuously employed her in that capacity until on or about September 24, 2021 when her employment ended.

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

The Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Employers required Perez and the Aggrieved Employees to work off the clock without compensation. The Employers required Perez and the Aggrieved Employees to go through security check and also temperature check (during the Coronavirus pandemic) off the clock and before they could clock in. Further, the Employer's time keeping machine often malfunctioned and caused delays, and as a result, Perez and the Aggrieved Employees had to stand and wait in line several minutes every time they wanted to clock in. The Employers also arbitrarily deducted several minutes each day from Perez and the Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

As a result of the off-the-clock work and the deductions described above, the Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek.

As a result of the off-the-clock work and the deductions described above, the Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Employers also failed to include all non-discretionary bonuses when calculating Perez and the other Aggrieved Employees' regular rates of pay for overtime and double-time wage purposes.

At all relevant times, the Employers failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, due to understaffing and lack of coverage, Perez and the Aggrieved Employees often had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a second meal period when they worked more than 10 hours in a workday. The Employers also failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest breaks. Further, due to understaffing and lack of coverage, the Employers often failed to provide Perez and the Aggrieved Employees with all 10-minute rest breaks required by law in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a third rest break when they worked more than 10 hours in a workday. The Employers also failed to pay premium wages for days on which they failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Employers required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Perez and all of the other Aggrieved Employees to supply tools such as tape and utility knife, and box cutter, protective gear and PPE such as gloves, hair net, face mask, goggles or face shield, to perform their job duties. However, the Employers did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items.

At all relevant times, the Employers failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the unpaid wages discussed above.

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

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

- (a) The Employers failed to pay Perez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Employers failed to provide Perez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to provide them with one or more meal periods as required by law;
- (e) The Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Employers failed to indemnify Perez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Employers unlawfully deducted wages belonging to Perez and all of the other Aggrieved Employees;
- (h) The Employers knowingly and intentionally failed to provide Perez and all of the other Aggrieved Employees with accurate and complete wage statements; and

- (i) The Employers willfully failed to timely pay Perez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Employers and when their employment ended.

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

### **The Wage Order**

The Wage Order applies to “all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines "Manufacturing Industry" to mean, “any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part[.]” Wage Order, § 2(H). At all relevant times during the applicable limitations period, the “Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the Employers operated wipes manufacturing and warehousing facilities, and Perez, and all of the Aggrieved Employees worked for, one or more of these establishments operated by Employers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of 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 (7<sup>th</sup>) 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 (7<sup>th</sup>) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

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

The Employers required Perez and the Aggrieved Employees to work off the clock without compensation. The Employers required Perez and the Aggrieved Employees to go through security check and also temperature check (during the Coronavirus pandemic) off the clock and before they could clock in. Further, the Employer's time keeping machine often malfunctioned and caused delays, and as a result, Perez and the Aggrieved Employees had to stand and wait in line several minutes every time they wanted to clock in. The Employers also arbitrarily deducted several minutes each day from Perez and Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole

source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Employers, Perez and all of the other Aggrieved Employees earned bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Employers failed to pay to Perez and all of the other Aggrieved Employees bonuses overtime and double time premium pay on such bonuses.

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

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

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.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal



period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

- (C) 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.
- (D) 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.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the

employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Employers failed to provide Perez and all of the other Aggrieved Employees with all timely meal periods. The Employers denied Perez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, due to understaffing and lack of coverage, Perez and the Aggrieved Employees had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a second meal periods when they worked more than 10 hours in a workday. Furthermore, the Employers failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

Section 2(G) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

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 Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest breaks. Further, due to understaffing and lack of coverage, the Employers often failed to provide Perez and the Aggrieved Employees with all 10-minute rest breaks in workday. The Employers also failed to provide Perez and the Aggrieved Employees with a third rest break when they worked more than 10 hours in a workday. Moreover, the Employers failed to pay Perez and all of the other Aggrieved Employees premium wages on workdays the Employers failed to provide Perez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

Additionally, the Wage Order states,

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

Wage Order, §§ 9(A) and (B).

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

As described above, the Employers required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Perez and all of the other Aggrieved Employees to supply tools, protective gear and PPE to perform their job duties. However, the Employers did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items. Accordingly, Perez seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

### **Unlawful Deductions** **(Lab. Code § 221)**

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As described above, the Employers arbitrarily deducted several minutes each day from Perez and the Aggrieved Employees’ hours worked in violation of Labor Code § 221. Accordingly, Perez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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 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 Employers failed to state in the wage statements they issued to Perez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the earned but unpaid wages described above. Accordingly, Perez seeks civil penalties for the Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

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

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

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

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



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

The Employers failed to pay Perez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perez, including minimum, overtime and premium wages, and related compensation. By failing to pay Perez and all of the other Aggrieved Employees as set forth above at the end of employment, the Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Perez seeks civil penalties from the 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)).

### **Conclusion**

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Margarita Perez 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

*LWDA / Workforce Personnel, Inc., et al.*  
*Re: Margarita Martinez Perez*  
*September 7, 2022*  
*Page 19 of 19*

formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.  
david@spivaklaw.com  
cc: Margarita Perez  
Louis M. Benowitz Esq.

Workforce Personnel, Inc.  
c/o Agent for service of process  
Anselmo Soriano  
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#14010  
RANCHO CUCAMONGA CA 91730

Diamond Wipes International, Inc.  
c/o Agent for service of process  
PARACORP INCORPORATED  
Registered Corporate 1505 Agent  
2804 GATEWAY OAKS DR  
#100  
SACRAMENTO CA 95833

# **EXHIBIT 3**

ORIGINAL

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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

SEP 19 2022

BY Mayela Martinez  
MAYELA MARTINEZ, DEPUTY

Attorneys for Plaintiff(s),  
MARGARITA PEREZ, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO  
(UNLIMITED JURISDICTION)**

MARGARITA PEREZ, on behalf of  
herself and all others similarly situated,  
and the general public,

*Plaintiff(s),*

vs.

WORKFORCE PERSONNEL, INC.,  
California Corporation; DIAMOND  
WIPES INTERNATIONAL, INC.,  
California Corporation; and DOES 1-50,  
inclusive,

*Defendant(s).*

Case No. **CIV SB 22 208 22**

**CLASS ACTION**

**COMPLAINT FOR:**

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

**JURY TRIAL DEMANDED**

BY FAX



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**ADDITIONAL ATTORNEY(S) FOR PLAINTIFF(S)**

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1 Plaintiff, Margarita Perez (hereafter “Plaintiff” or “Perez”), on behalf of herself 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. 9-2001 (hereafter “the Wage Order”), and the  
6 California Business and Professions Code against Defendants Workforce Personnel, Inc., a  
7 California Corporation, Diamond Wipes International, Inc., a California Corporation, and Does 1  
8 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her  
10 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related  
11 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) Indemnify for necessary work-related expenditures;

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

20 (H) Timely pay wages upon termination of employment

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

23 **II. THE PARTIES**

24 3. Plaintiff Margarita Perez is a resident of California.

25 4. Defendant Workforce Personnel, Inc. is a corporation organized and existing under  
26 the laws of California and also a citizen of California based on Plaintiff’s information and belief.

27 5. Defendant Diamond Wipes International, Inc. is a corporation organized and  
28 existing under the laws of California and also a citizen of California based on Plaintiff’s  
information and belief.

6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of



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1 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but  
2 is informed and believes and thereon alleges that said Defendants are legally responsible for the  
3 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.  
4 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants  
when ascertained.

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

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

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

### 18 **III. CLASS ALLEGATIONS**

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

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



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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.

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

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

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

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

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

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

E. Whether Defendants knowingly and intentionally failed to issue to the class accurate and complete itemized wage statements;

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

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

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

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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16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class 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. IWC Wage Order 9-2001 ("the Wage Order") applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis" Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Perez, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Perez, and all of the Class Members worked for, one or more establishments operated as a warehouse. Accordingly, Perez and all of the other Class Members are entitled to the protections the Wage Order provides.



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1           20.     On approximately July 2018, the Defendants began to employ Perez in Chino in  
2     the position of hourly, non-exempt packer. The Defendants continuously employed her in that  
3     capacity until on or about September 23, 2021 when her employment ended.

4           21.     At all relevant times, the Defendants issued wages to Perez and all of the other  
5     Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant  
6     times, the Defendants classified Perez and all of the other Class Members as non-exempt  
7     employees entitled to the protections of the Labor Code and the Wage Order.

8           22.     At all relevant times, the Defendants failed to compensate Perez and all of the  
9     other Class Members for all hours worked at the applicable minimum or regular rates of pay. The  
10    Defendants required Perez and the Class Members to work off the clock without compensation.  
11    The Defendants required Perez and the Class Members to submit to security checks and  
12    temperature checks off the clock and without pay before they could clock in. Further, frequent  
13    malfunctions of the Defendants' time keeping required Perez and the Class Members wait for  
14    several minutes to record entries and exits from duty. The Defendants also arbitrarily deducted  
15    several minutes each day from Perez and Class Members' hours worked and failed to compensate  
16    them for all hours worked.

17           23.     At all relevant times, the Defendants failed to compensate Perez and all of the  
18    other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40  
19    in a week, and for the first eight hours of the seventh day of the workweek. Time spent in the  
20    activities described above, combined with other hours worked by Perez and the Class Members,  
21    resulted in Perez and the Class Members working overtime hours. However, the Defendants did  
22    not pay overtime premium wages to Perez and the Class Members for such work time.

23           24.     At all relevant times, the Defendants failed to compensate Perez and all of the  
24    other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over  
25    the first eight of the seventh day of the workweek. Time spent in the activities described above,  
26    combined with other hours worked by Perez and the Class Members resulted in Perez and the  
27    Class Members working doubletime hours. However, the Defendants did not pay doubletime  
28    premium wages to Perez and the Class Members for such work time.

          25.     At all relevant times, the Defendants failed to provide Perez and all of the other  
Class Members with all timely 30-minute, off-duty meal periods. The Defendants prohibited  
Perez and the other Class Members from leaving the premises during their meal periods. Further,



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1 understaffing by The Defendants compelled Perez and the Class Members to delay their meal  
2 periods for more than five (5) hours into their daily work shifts. The Defendants also failed to  
3 provide Perez and the Class Members with a second meal period when they worked more than 10  
4 hours in a workday. The Defendants also failed to pay premium wages for days on which they  
5 failed to provide Perez and all of the other Class Members with meal periods as required by law.

6 26. At all relevant times, the Defendants failed to authorize and permit Perez and all  
7 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked  
8 or major portion thereof. The Defendants prohibited Perez and the other Class Members from  
9 leaving the premises during their rest periods. Further, understaffing by The Defendants  
10 compelled Perez and the Class Members to delay their rest periods for more than four hours into  
11 their daily work shifts. The Defendants also failed to provide Perez and the Class Members with  
12 three periods when they worked more than 10 hours in a workday. The Defendants also failed to  
13 pay premium wages for days on which they failed to authorize and permit Perez and all of the  
14 other Class Members to take rest breaks as required by law.

15 27. At all relevant times, the Defendants required Perez and all of the other Class  
16 Members to incur certain business expenses in the course of performing their duties. The  
17 Defendants required Perez and all of the other Class Members to supply tools, protective gear and  
18 PPE to perform their job duties. However, the Defendants did not provide these items and did not  
19 reimburse Perez and the other Class Members for these items.

20 28. At all relevant times, the Defendants failed to issue to Perez and all of the other  
21 Class Members complete and accurate wage statements that state all hours worked at the correct  
22 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on  
23 the wage statements they issued to Perez and all of the other Class Members the unpaid wages  
24 discussed above. The wage statements fail to state all minimum wages earned, all regular wages  
25 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages  
26 earned, all rest break premium wages earned, and related information.

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

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



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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 (7<sup>th</sup>) 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 (7<sup>th</sup>) consecutive day of work in a workweek. 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.

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

37. Labor Code section 510 states:

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

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

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



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1 during a payroll period.

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

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

9 42. 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 43. 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. UNPAID REPORTING TIME PAY**

18 44. Under Section 5 of the Wage Order

19 [e]ach workday an employee is required to report for work and does report, but is  
20 not put to work or is furnished less than half said employee's usual or scheduled  
21 day's work, the employee shall be paid for half the usual or scheduled day's work,  
22 but in no event for less than two (2) hours nor more than four (4) hours, at the  
23 employee's regular rate of pay, which shall not be less than the minimum wage.

24 45. The Defendants required Perez and all of the other Class Members to report for a  
25 full day of work (eight or more hours) and, instead of furnishing them with half of more of their  
26 usual scheduled day's work, sent them home. Furthermore, the Defendants failed to pay Perez  
27 and all of the other Class Members at least two (2) hours at their regular rates of pay. This is a  
28 violation of the Wage Order and also the Labor Code (§ 1198).

46. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'  
failure to pay Plaintiff and the other Class Members at least two (2) hours at their regular rates of



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1 pay as required by California law.

2 **C. FAILURE TO PAY SPLIT SHIFT PREMIUMS**

3 47. Wage Order § 2(M) defines a “Shift” as “designated hours of work by an  
4 employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2  
5 (N) as “a work schedule which is interrupted by non-paid non-working periods established by the  
6 employer, other than bona fide rest or meal periods.”

7 48. Wage Order § 4(C) pertaining to “Minimum Wages” states: “When an employee  
8 works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the  
9 minimum wage for that workday, except when the employee resides at the place of employment.”

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

13 50. The Defendants directed Perez and all of the Class Members to regularly work  
14 split shifts. However, the Defendants intentionally failed to pay Perez and all of the Class  
15 Members the equivalent of a sum greater than one hour’s pay at the minimum wage in addition  
16 to the minimum wage for a workday. Plaintiff is informed and believes and thereon alleges that,  
17 at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which  
18 resulted in Defendants’ failure to pay Plaintiff and the other Class Members the equivalent of a  
19 sum greater than one hour’s pay at the minimum wage in addition to the minimum wage for a  
20 workday as required by California law.

21 51. In so doing, the Defendants violated Labor Code §§ 1197 and 1198.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS**

24 **Lab. Code §§ 226.7 and 512**

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

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

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

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



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

5 55. In relevant part, In relevant part, California Labor Code § 512 states:

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

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

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

19 Meal Periods:

20 (A) No employer shall employ any person for a work period of more  
21 than five (5) hours without a meal period of not less than 30  
22 minutes, except that when a work period of not more than six (6)  
23 hours will complete the day's work the meal period may be waived  
24 by mutual consent of the employer and the employee.

25 (B) An employer may not employ an employee for a work period of  
26 more than ten (10) hours per day without providing the employee  
27 with a second meal period of not less than 30 minutes, except that  
28 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.

(C) 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



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may, in writing, revoke the agreement at any time.

(D) 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.

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

57. 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.

58. 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. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants prohibited Perez and the other Class Members from leaving the premises during their meal periods. Further, understaffing by The Defendants compelled Perez and the Class Members to delay their meal periods for more than five (5) hours into their daily work shifts. The Defendants also



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1 failed to provide Perez and the Class Members with a second meal period when they worked  
2 more than 10 hours in a workday.

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

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

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

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

### 16 **THIRD CAUSE OF ACTION**

#### 17 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

##### 18 **Lab. Code § 226.7**

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

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

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

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

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



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

2                     Rest Periods:

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

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

- 18                     (b)     An employer shall not require an employee to work during  
19                               a meal or rest period mandated pursuant to an applicable  
20                               statute, or applicable regulation, standard, or order of the  
21                               Industrial Welfare Commission, the Occupational Safety  
22                               and Health Standards Board, or the Division of  
23                               Occupational Safety and Health.  
24                     (c)     If an employer fails to provide an employee a meal period  
25                               or rest period in accordance with a state law, including, but  
26                               not limited to, an applicable statute or applicable  
27                               regulation, standard, or order of the Industrial Welfare  
28                               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.

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



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1           69. Defendants intentionally failed to authorize and permit Plaintiff and the Class  
2 Members to take all 10-minute rest periods free from any work duties in accordance with the  
3 Wage Order. The Defendants prohibited Perez and the other Class Members from leaving the  
4 premises during their rest periods. Further, understaffing by The Defendants compelled Perez and  
5 the Class Members to delay their rest periods for more than four hours into their daily work shifts.  
6 The Defendants also failed to provide Perez and the Class Members with three periods when they  
7 worked more than 10 hours in a workday.

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

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

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

23           73. Defendants failed to provide Plaintiff with all required rest breaks in accordance  
24 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times  
25 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy  
26 which resulted in Defendants not providing the Class Members with all rest breaks required by  
27 California law.

28           74. Defendants failed to pay Plaintiff the additional wages required by California  
Labor Code § 226.7 for all rest breaks not provided to her. 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



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1 Class Members with additional wages for all rest breaks not provided to them as required by  
2 California Labor Code § 226.7.

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

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

#### 9 **FOURTH CAUSE OF ACTION**

#### 10 **FAILURE TO INDEMNIFY**

#### 11 **Lab. Code § 2802**

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

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

14 78. In pertinent part, California Labor Code § 2802(a) states: "An employer shall  
15 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct  
16 consequence of the discharge of his or her duties." Additionally, the Wage Order states,

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

20 ...

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

27 Wage Order, § 9(A) and (B).

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

80. At all relevant times, Defendants required Plaintiff and the Class Members to incur  
certain business expenses in the course of performing their duties.

81. As described above, the Defendants required Perez and all of the other Class



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Members to incur certain business expenses in the course of performing their duties. The Defendants required Perez and all of the other Class members to supply tools, protective gear and PPE to perform their job duties. However, the Defendants did not provide these items and did not reimburse Perez and the other Class members for these items. Additionally, the Defendants did not provide tools to Perez and the other Class members they required them to use to perform their work, nor did they reimburse them for such tools, including gloves, utility knives, and related equipment.

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

### **FIFTH CAUSE OF ACTION**

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

##### **Lab. Code § 226**

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

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

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

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

A. Gross wages earned;

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

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

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

E. Net wages earned;

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



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

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

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

8           85.    Pursuant to California Labor Code § 226, an employee is deemed to suffer injury  
9 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if  
10 the employer fails to provide accurate and complete information as required by California Labor  
11 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement  
12 alone one or more of the following:

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

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

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

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

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

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

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

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

(1)     all deductions;



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

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

88. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Class Members all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). Defendants knowingly and intentionally did not issue either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, statements to Plaintiff and the Class Members that state all minimum wages earned, 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.

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

90. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty



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1 and expense in attempting to reconstruct time and pay records and/or has led to the submission of  
2 inaccurate information about wages to state and federal government agencies. Further, Plaintiff  
3 and the other Class Members were not able to ascertain from the wage statements whether  
4 Defendants complied with their obligations under California Labor Code section 226(a).

#### 5 **SIXTH CAUSE OF ACTION**

#### 6 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

#### 7 **Lab. Code §§ 201, 202, and 203**

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

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

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

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

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

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

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

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



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

4                           **SEVENTH CAUSE OF ACTION**

5                           **UNFAIR COMPETITION**

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

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

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

9           100. 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 the Business and Professions Code §§ 17200, *et seq.*

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

17           102. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the  
18 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class  
19 Members were deprived of minimum wages, regular wages, overtime wages, doubletime wages,  
20 missed meal period premium wages, missed rest period premium wages, tool and supplies  
21 expenses, and comparable money and property.

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

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

**V. PRAYER FOR RELIEF**

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



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- 1 A. An order that the action be certified as a class action with respect to  
2 Plaintiff's claims for violations of California law;  
3 B. An order that Plaintiff be appointed class representative;  
4 C. An order that counsel for Plaintiff be appointed class counsel;  
5 D. Unpaid wages, including minimum, regular, overtime, double-time,  
6 missed meal period, and missed rest period wages;  
7 E. Liquidated damages;  
8 F. Statutory penalties, including waiting time penalties;  
9 G. Restitution;  
10 H. Declaratory relief;  
11 I. Actual damages;  
12 J. Pre-judgment interest;  
13 K. Costs of suit;  
14 L. Reasonable attorneys' fees; and  
15 M. Such other relief as the Court deems just and proper.

16 **VI. DEMAND FOR JURY TRIAL**

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

19 Respectfully submitted,

20 THE SPIVAK LAW FIRM

21 Dated: September 16, 2022

22 By:



23 DAVID G. SPIVAK,  
24 CAROLINE TAHMASSIAN  
25 CHRISTINA J. PREJEAN  
26 Attorneys for Plaintiff(s),  
27 MARGARITA PEREZ, and all others  
28 similarly situated



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# **EXHIBIT 4**

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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

NOV 23 2022

BY: Sophia A. Smith  
Sophia A. Smith, Deputy

Attorneys for Plaintiff(s),  
MARGARITA PEREZ, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN BERNARDINO**

**(UNLIMITED JURISDICTION)**

MARGARITA PEREZ, on behalf of  
herself and as an "Aggrieved Employee"  
on behalf of other "Aggrieved Employees"  
under the Private Attorneys General Act of  
2004,

*Plaintiff(s),*

vs.

WORKFORCE PERSONNEL, INC.,  
California corporation; DIAMOND  
WIPES INTERNATIONAL, INC.,  
California corporation; and DOES 1-50,  
inclusive,

*Defendant(s).*

Case No.:

**CIV SB 2225774**

**COMPLAINT FOR VIOLATIONS OF THE  
LABOR CODE AND CIVIL PENALTIES  
UNDER THE LABOR CODE PRIVATE  
ATTORNEYS GENERAL ACT OF 2004,  
LABOR CODE §§ 2698, ET SEQ.**

**JURY TRIAL DEMANDED**

**BY FAX**



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ADDITIONAL ATTORNEY(S) FOR PLAINTIFF(S)

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1 Plaintiff, Margarita Perez (hereafter “Plaintiff” or “Perez”), on behalf of herself, the state  
2 of California, and all other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action for alleged violations of the California  
5 Labor Code, Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”), and  
6 the California Business and Professions Code against Defendants Workforce Personnel, Inc., a  
7 California Corporation, Diamond Wipes International, Inc., a California Corporation, and Does 1  
8 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her  
10 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related  
11 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) Indemnify for necessary work-related expenditures;

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

20 (H) Timely pay wages upon termination of employment

21 Accordingly, Plaintiff now seeks to recover civil penalties, attorneys’ fees, costs, and related relief  
22 through this action.

23 **II. THE PARTIES**

24 3. Plaintiff Margarita Perez is a resident of California. At all relevant times, Plaintiff  
25 was an “employee” within the meaning of Title 8 California Code of Regulations Section 11090,  
26 and an “aggrieved employee” within the meaning of California Labor Code § 2699(c).

27 4. Defendant Workforce Personnel, Inc. is a corporation organized and existing under  
28 the laws of California and also a citizen of California based on Plaintiff’s information and belief.

5. Defendant Diamond Wipes International, Inc. is a corporation organized and  
existing under the laws of California and also a citizen of California based on Plaintiff’s



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information and belief.

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

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

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

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/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees as described below in accordance with applicable laws as alleged herein.

### **III. STATEMENT OF FACTS**

10. The “Aggrieved Employees” are all individuals Defendants employed in California as non-exempt, hourly employees, including non-exempt, hourly assistant general managers and store managers, and persons in other comparable positions, at any time during the period beginning September 7, 2021 and ending on the date that final judgment is entered in this action.

11. IWC Wage Order 9-2001 (“the Wage Order”) applies to “all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis” Wage Order, § 1. The Wage Order defines “Transportation Industry” to mean “any industry, business, or establishment operated for the purpose of conveying persons or property from one place to



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1 another whether by rail, highway, air, or water, and all operations and services in connection  
2 therewith; and also includes storing or warehousing of goods or property, and the repairing,  
3 parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times  
4 during the applicable limitations period, the Defendants, Perez, and all of the Aggrieved  
5 Employees were covered by the Wage Order because the Defendants operated, and Perez, and all  
6 of the Aggrieved Employees worked for, one or more establishments operated as a warehouse.  
7 Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the  
8 Wage Order provides.

9 12. On approximately July 2018, the Defendants began to employ Perez in Chino in  
10 the position of hourly, non-exempt packer. The Defendants continuously employed her in that  
11 capacity until on or about September 23, 2021 when her employment ended.

12 13. At all relevant times, the Defendants issued wages to Perez and all of the other  
13 Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all  
14 relevant times, the Defendants classified Perez and all of the other Aggrieved Employees as non-  
15 exempt employees entitled to the protections of the Labor Code and the Wage Order.

16 14. At all relevant times, the Defendants failed to compensate Perez and all of the  
17 other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of  
18 pay. The Defendants required Perez and the Aggrieved Employees to work off the clock without  
19 compensation. The Defendants required Perez and the Aggrieved Employees to submit to security  
20 checks and temperature checks off the clock and without pay before they could clock in. Further,  
21 frequent malfunctions of the Defendants' time keeping required Perez and the Aggrieved  
22 Employees wait for several minutes to record entries and exits from duty. The Defendants also  
23 arbitrarily deducted several minutes each day from Perez and Aggrieved Employees' hours  
24 worked and failed to compensate them for all hours worked.

25 15. At all relevant times, the Defendants failed to compensate Perez and all of the  
26 other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day,  
27 over 40 in a week, and for the first eight hours of the seventh day of the workweek. Time spent  
28 in the activities described above, combined with other hours worked by Perez and the Aggrieved  
Employees, resulted in Perez and the Aggrieved Employees working overtime hours. However,  
the Defendants did not pay overtime premium wages to Perez and the Aggrieved Employees for  
such work time.



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1           16. At all relevant times, the Defendants failed to compensate Perez and all of the  
2 other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and  
3 all over the first eight of the seventh day of the workweek. Time spent in the activities described  
4 above, combined with other hours worked by Perez and the Aggrieved Employees resulted in  
5 Perez and the Aggrieved Employees working doubletime hours. However, the Defendants did not  
6 pay doubletime premium wages to Perez and the Aggrieved Employees for such work time.

7           17. At all relevant times, the Defendants failed to provide Perez and all of the other  
8 Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Defendants  
9 prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal  
10 periods. Further, understaffing by The Defendants compelled Perez and the Aggrieved Employees  
11 to delay their meal periods for more than five (5) hours into their daily work shifts. The  
12 Defendants also failed to provide Perez and the Aggrieved Employees with a second meal period  
13 when they worked more than 10 hours in a workday. The Defendants also failed to pay premium  
14 wages for days on which they failed to provide Perez and all of the other Aggrieved Employees  
15 with meal periods as required by law.

16           18. At all relevant times, the Defendants failed to authorize and permit Perez and all  
17 of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours  
18 worked or major portion thereof. The Defendants prohibited Perez and the other Aggrieved  
19 Employees from leaving the premises during their rest periods. Further, understaffing by The  
20 Defendants compelled Perez and the Aggrieved Employees to delay their rest periods for more  
21 than four hours into their daily work shifts. The Defendants also failed to provide Perez and the  
22 Aggrieved Employees with three periods when they worked more than 10 hours in a workday.  
23 The Defendants also failed to pay premium wages for days on which they failed to authorize and  
24 permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

25           19. At all relevant times, the Defendants required Perez and all of the other Aggrieved  
26 Employees to incur certain business expenses in the course of performing their duties. The  
27 Defendants required Perez and all of the other Aggrieved Employees to supply tools, protective  
28 gear and PPE to perform their job duties. However, the Defendants did not provide these items  
and did not reimburse Perez and the other Aggrieved Employees for these items.

          20. At all relevant times, the Defendants failed to issue to Perez and all of the other  
Aggrieved Employees complete and accurate wage statements that state all hours worked at the



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1 correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to  
2 state on the wage statements they issued to Perez and all of the other Aggrieved Employees the  
3 unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all  
4 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.

5 21. At all relevant times, the Defendants also failed to timely pay Perez and all of the  
6 other Aggrieved Employees all earned wages as described above during and at the conclusion of  
7 employment.

8 22. At all relevant times, the Defendants failed to maintain accurate employee records  
9 of Perez and all of the other Aggrieved Employees.

10 23. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'  
11 unlawful practices and policies, Plaintiff and the Aggrieved Employees were:

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

### **FIRST (AND ONLY) CAUSE OF ACTION**

#### **CIVIL PENALTIES**

**(Lab. Code §§ 2698, *et seq.*)**

**(By Plaintiff, on behalf of himself and the other Aggrieved Employees,  
against all Defendants)**

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



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25. At all relevant times, Plaintiff and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

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

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

27. 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 (7<sup>th</sup>) 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 (7<sup>th</sup>) consecutive day of work in a workweek. 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.

28. 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.

29. Labor Code section 510 states:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the



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

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

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

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

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

34. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and doubletime hours, respectively, that they worked at the correct rates of pay.

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

**B. UNPAID REPORTING TIME PAY**

36. Under Section 5 of the Wage Order

[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled



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day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

37. The Defendants required Perez and all of the other Aggrieved Employees to report for a full day of work (eight or more hours) and, instead of furnishing them with half of more of their usual scheduled day's work, sent them home. Furthermore, the Defendants failed to pay Perez and all of the other Aggrieved Employees at least two (2) hours at their regular rates of pay. This is a violation of the Wage Order and also the Labor Code (§ 1198).

38. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiff and the other Aggrieved Employees at least two (2) hours at their regular rates of pay as required by California law.

**C. FAILURE TO PAY SPLIT SHIFT PREMIUMS**

39. Wage Order § 2(M) defines a "Shift" as "designated hours of work by an employee, with a designated beginning time and quitting time." A "Split shift" is defined by § 2 (N) as "a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

40. Wage Order § 4(C) pertaining to "Minimum Wages" states: "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

41. Under Labor Code § 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."

42. The Defendants directed Perez and all of the Aggrieved Employees to regularly work split shifts. However, the Defendants intentionally failed to pay Perez and all of the Aggrieved Employees the equivalent of a sum greater than one hour's pay at the minimum wage in addition to the minimum wage for a workday. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiff and the other Aggrieved Employees the equivalent of a sum greater than one hour's pay at the minimum wage in addition to the minimum wage for a workday as required by California law.



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1 **D. FAILURE TO PROVIDE MEAL PERIODS**

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

3 44. At all relevant times during the applicable limitations period, Plaintiff and the  
4 Aggrieved Employees have been employees of Defendants and entitled to the benefits and  
5 protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

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

7  
8 The maximum hours of work and the standard conditions of labor fixed by the  
9 commission shall be the maximum hours of work and the standard conditions of  
10 labor for employees. The employment of any employee for longer hours than those  
11 fixed by the order or under conditions of labor prohibited by the order is unlawful.

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

13 An employer shall not employ an employee for a work period of  
14 more than five hours per day without providing the employee with  
15 a meal period of not less than 30 minutes, except that if the total  
16 work period per day of the employee is no more than six hours, the  
17 meal period may be waived by mutual consent of both the  
18 employer and employee.

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

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

26 Meal Periods:

27 (A) No employer shall employ any person for a work period of more  
28 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.

(B) An employer may not employ an employee for a work period of  
more than ten (10) hours per day without providing the employee  
with a second meal period of not less than 30 minutes, except that



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1 if the total hours worked is no more than 12 hours, the second meal  
2 period may be waived by mutual consent of the employer and the  
employee only if the first meal period was not waived.

3 (C) Unless the employee is relieved of all duty during a 30 minute meal  
4 period, the meal period shall be considered an "on duty" meal  
5 period and counted as time worked. An "on duty" meal period shall  
6 be permitted only when the nature of the work prevents an  
7 employee from being relieved of all duty and when by written  
8 agreement between the parties an on-the-job paid meal period is  
9 agreed to. The written agreement shall state that the employee  
10 may, in writing, revoke the agreement at any time.

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

15 (E) In all places of employment where employees are required to eat  
16 on the premises, a suitable place for that purpose shall be  
17 designated.

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

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

24 (c) If an employer fails to provide an employee a meal period  
25 or rest period in accordance with a state law, including, but  
26 not limited to, an applicable statute or applicable  
27 regulation, standard, or order of the Industrial Welfare  
28 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.



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1           49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the  
2 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each  
3 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also  
4 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.  
5 Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all  
6 required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants  
7 prohibited Perez and the other Aggrieved Employees from leaving the premises during their  
8 meal periods. Further, understaffing by The Defendants compelled Perez and the Aggrieved  
9 Employees to delay their meal periods for more than five (5) hours into their daily work shifts.  
10 The Defendants also failed to provide Perez and the Aggrieved Employees with a second meal  
11 period when they worked more than 10 hours in a workday.

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

17           51. Plaintiff is informed and believes and thereon alleges that, at all 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 and the Aggrieved Employees with all off-duty  
20 meal periods required by California law.

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

24 **E. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

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

26           54. At all relevant times during the applicable limitations period, Plaintiff and the  
27 Aggrieved Employees have been employees of Defendants and entitled to the benefits and  
28 protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

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

///



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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.

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 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.

57. 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



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period is not provided.

58. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees 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.

59. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved Employees to take all 10-minute rest periods free from any work duties in accordance with the Wage Order. The Defendants prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest periods. Further, understaffing by The Defendants compelled Perez and the Aggrieved Employees to delay their rest periods for more than four hours into their daily work shifts. The Defendants also failed to provide Perez and the Aggrieved Employees with three periods when they worked more than 10 hours in a workday.

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

61. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees 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.

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

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



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64. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to her. 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 Aggrieved Employees with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

**F. FAILURE TO INDEMNIFY**

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

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

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

...

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

Wage Order, § 9(A) and (B).

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

68. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties.

69. As described above, the Defendants required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Defendants required Perez and all of the other Class members to supply tools, protective gear and PPE to perform their job duties. However, the Defendants did not provide these items and did not reimburse Perez and the other Class members for these items. Additionally, the Defendants did not provide tools to Perez and the other Class members they required them to use to perform their



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1 work, nor did they reimburse them for such tools, including gloves, utility knives, and related  
2 equipment.

3 70. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
4 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'  
5 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they  
6 incurred during the course of performing their duties.

7 **G. FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

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

9 72. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved  
10 Employees were entitled to receive, semi-monthly or at the time of each payment of wages, an  
11 accurate itemized statement showing:

12 A. Gross wages earned;

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

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

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

20 E. Net wages earned;

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

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

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

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

73. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury  
if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if  
the employer fails to provide accurate and complete information as required by California Labor



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Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

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

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

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

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

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

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

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

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

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

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

76. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and



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1 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,  
2 the corresponding number of hours worked at each rate by the employee and other requirements  
3 of California Labor Code section 226. Defendants failed to state in the wage statements they  
4 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,  
5 including, but not limited to, regular and overtime wages for work they performed off-the-clock  
6 after clocking-out (as described above). Defendants knowingly and intentionally did not issue  
7 either as a detachable part of the check, draft, or voucher paying the employee's wages, or  
8 separately if wages are paid by personal check or cash, statements to Plaintiff and the Aggrieved  
9 Employees that state all minimum wages earned, all regular wages earned, all overtime wages  
10 earned, all doubletime wages earned, all meal period premium wages earned, all rest break  
premium wages earned, and other required information.

11 77. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with  
12 accurate wage statements was knowing and intentional. Defendants had the ability to provide  
13 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally  
14 provided wage statements that Defendants knew were not accurate.

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

24 **H. UNTIMELY FINAL WAGES**

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

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



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

3 82. Labor Code § 202 provides that all earned and unpaid wages of an employee who  
4 quits after providing at least 72-hours notice before quitting are due and payable at the time of  
5 quitting and that all earned and unpaid wages of an employee who quits without providing at least  
6 72-hours notice before quitting are due and payable within 72 hours.

7 83. The Defendants failed to pay Perez and all of the other Aggrieved Employees  
8 whose employment ended all of the earned but unpaid wages described above by the conclusion  
9 of their employment with Perez, including minimum wages, regular wages, overtime wages,  
10 doubletime wages, unprovided meal period premium wages, unprovided rest break premium  
11 wages, and related compensation.

12 84. By failing to pay such earned wages to Plaintiff and the Aggrieved Employees,  
13 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code  
14 § 201 or § 202.

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

20 **I. UNTIMELY WAGES DURING EMPLOYMENT**

21 86. Labor Code § 204 states

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

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

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



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for which the employer is correcting its initial report of hours worked.

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

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

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

**J. CIVIL PENALTIES SOUGHT**

108. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

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

110. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

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

B. For violations of California Labor Code § 221, one hundred dollars (\$100) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation, or any willful or intentional violation (penalty amounts established by California Labor Code § 225.5).

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



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1 D. For violations of California Labor Code §§ 510 and 512, fifty dollars  
2 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for  
3 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts  
4 established by California Labor Code § 558).

5 E. For violations of California Labor Code § 1197, one hundred dollars  
6 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred  
7 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period  
8 (regardless of whether the initial violations were intentionally committed) (penalty amounts  
9 established by California Labor Code § 1197.1).

10 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,  
11 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for  
12 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay  
13 period for each subsequent violation (penalty amounts established by California Labor Code §  
14 2699(f)(2)).

15 111. Plaintiff has complied with the procedures for bringing suit specified in California  
16 Labor Code § 2699.3. By letters dated September 7, 2022 and September 19, 2022, Plaintiff filed  
17 written notices online with the Labor and Workforce Development Agency (“LWDA”) and gave  
18 written notices by certified mail to Defendants of the specific provisions of the California Labor  
19 Code alleged to have been violated, including the facts and theories to support the alleged  
20 violations. True and correct copies of the notices to the LWDA dated September 7, 2022 and  
21 September 19, 2022 are attached collectively as Exhibit A. Plaintiff accompanied her LWDA  
22 notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within  
23 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will  
24 provide written notice to Plaintiff informing her that it does not intend to investigate these  
25 allegations.

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

#### IV. PRAYER FOR RELIEF

113. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays  
for relief and judgment against Defendants as follows:



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- 1 A. Civil penalties;  
2 B. Costs of suit;  
3 C. Reasonable attorneys' fees; and  
4 D. Such other relief as the Court deems just and proper.

5 V. **DEMAND FOR JURY TRIAL**

6 Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury  
7 trial on all issues so triable.

8 Respectfully submitted,

9 THE SPIVAK LAW FIRM

10 Dated: November 23, 2022

11 By:   
12 DAVID G. SPIVAK,  
13 CAROLINE TAHMASSIAN  
14 CHRISTINA J. PREJEAN  
15 Attorneys for Plaintiff(s),  
16 MARGARITA PEREZ, and all others  
17 similarly situated  
18  
19  
20  
21  
22  
23  
24  
25



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# EXHIBIT A



Stacy Aguirre <[stacy.aguirre@spivaklaw.com](mailto:stacy.aguirre@spivaklaw.com)>

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## Thank you for submission of your PAGA Case.

1 message

---

**LWDA DO NOT REPLY** <[lwdadonotreply@dir.ca.gov](mailto:lwdadonotreply@dir.ca.gov)>  
To: "stacy.aguirre@spivaklaw.com" <[stacy.aguirre@spivaklaw.com](mailto:stacy.aguirre@spivaklaw.com)>

Wed, Sep 7, 2022 at 4:07 PM

9/7/2022

LWDA Case No. LWDA-CM-906533-22  
Law Firm : The Spivak Law Firm  
Plaintiff Name : Margarita Martinez Perez  
Employer: Workforce Personnel, Inc.  
Filing Fee : \$75.00  
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)



**\*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL\***

September 7, 2022

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

Re: Margarita Martinez Perez / Workforce Personnel, Inc., et al.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Margarita Perez (hereafter “Perez” or “Complainant”) provides notice that Workforce Personnel, Inc., a California Corporation, Diamond Wipes International, Inc., a California corporation, and related entities (collectively “the Employers”) violated her rights and those of all other individuals the Employers have employed directly or indirectly or otherwise contracted with in California as non-exempt, hourly employees, including packers and individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the Employers and their agents and representatives.

At all relevant times, the Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

### **Statement of Facts**

On approximately July 2018, the Employers began to employ Perez in Chino in the position of hourly, non-exempt packer. The Employers continuously employed her in that capacity until on or about September 24, 2021 when her employment ended.

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

The Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Employers required Perez and the Aggrieved Employees to work off the clock without compensation. The Employers required Perez and the Aggrieved Employees to go through security check and also temperature check (during the Coronavirus pandemic) off the clock and before they could clock in. Further, the Employer's time keeping machine often malfunctioned and caused delays, and as a result, Perez and the Aggrieved Employees had to stand and wait in line several minutes every time they wanted to clock in. The Employers also arbitrarily deducted several minutes each day from Perez and the Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

As a result of the off-the-clock work and the deductions described above, the Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek.

As a result of the off-the-clock work and the deductions described above, the Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Employers also failed to include all non-discretionary bonuses when calculating Perez and the other Aggrieved Employees' regular rates of pay for overtime and double-time wage purposes.

At all relevant times, the Employers failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, due to understaffing and lack of coverage, Perez and the Aggrieved Employees often had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a second meal period when they worked more than 10 hours in a workday. The Employers also failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest breaks. Further, due to understaffing and lack of coverage, the Employers often failed to provide Perez and the Aggrieved Employees with all 10-minute rest breaks required by law in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a third rest break when they worked more than 10 hours in a workday. The Employers also failed to pay premium wages for days on which they failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Employers required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Perez and all of the other Aggrieved Employees to supply tools such as tape and utility knife, and box cutter, protective gear and PPE such as gloves, hair net, face mask, goggles or face shield, to perform their job duties. However, the Employers did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items.

At all relevant times, the Employers failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the unpaid wages discussed above.



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

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

- (a) The Employers failed to pay Perez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Employers failed to provide Perez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to provide them with one or more meal periods as required by law;
- (e) The Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Employers failed to indemnify Perez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Employers unlawfully deducted wages belonging to Perez and all of the other Aggrieved Employees;
- (h) The Employers knowingly and intentionally failed to provide Perez and all of the other Aggrieved Employees with accurate and complete wage statements; and

- (i) The Employers willfully failed to timely pay Perez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Employers and when their employment ended.

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

### **The Wage Order**

The Wage Order applies to “all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines "Manufacturing Industry" to mean, “any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part[.]” Wage Order, § 2(H). At all relevant times during the applicable limitations period, the “Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the Employers operated wipes manufacturing and warehousing facilities, and Perez, and all of the Aggrieved Employees worked for, one or more of these establishments operated by Employers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of 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 (7<sup>th</sup>) 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 (7<sup>th</sup>) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

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

The Employers required Perez and the Aggrieved Employees to work off the clock without compensation. The Employers required Perez and the Aggrieved Employees to go through security check and also temperature check (during the Coronavirus pandemic) off the clock and before they could clock in. Further, the Employer's time keeping machine often malfunctioned and caused delays, and as a result, Perez and the Aggrieved Employees had to stand and wait in line several minutes every time they wanted to clock in. The Employers also arbitrarily deducted several minutes each day from Perez and Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole

source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Employers, Perez and all of the other Aggrieved Employees earned bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Employers failed to pay to Perez and all of the other Aggrieved Employees bonuses overtime and double time premium pay on such bonuses.

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

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

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.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal

period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

- (C) 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.
- (D) 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.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the

employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Employers failed to provide Perez and all of the other Aggrieved Employees with all timely meal periods. The Employers denied Perez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, due to understaffing and lack of coverage, Perez and the Aggrieved Employees had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a second meal periods when they worked more than 10 hours in a workday. Furthermore, the Employers failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

Section 2(G) of the Wage Order states,



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

In relevant part, Labor Code section 1198 states,

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

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

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 Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest breaks. Further, due to understaffing and lack of coverage, the Employers often failed to provide Perez and the Aggrieved Employees with all 10-minute rest breaks in workday. The Employers also failed to provide Perez and the Aggrieved Employees with a third rest break when they worked more than 10 hours in a workday. Moreover, the Employers failed to pay Perez and all of the other Aggrieved Employees premium wages on workdays the Employers failed to provide Perez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

Additionally, the Wage Order states,

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

Wage Order, §§ 9(A) and (B).

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

As described above, the Employers required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Perez and all of the other Aggrieved Employees to supply tools, protective gear and PPE to perform their job duties. However, the Employers did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items. Accordingly, Perez seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

### **Unlawful Deductions** **(Lab. Code § 221)**

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As described above, the Employers arbitrarily deducted several minutes each day from Perez and the Aggrieved Employees’ hours worked in violation of Labor Code § 221. Accordingly, Perez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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 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 Employers failed to state in the wage statements they issued to Perez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the earned but unpaid wages described above. Accordingly, Perez seeks civil penalties for the Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

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

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

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

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

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

The Employers failed to pay Perez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perez, including minimum, overtime and premium wages, and related compensation. By failing to pay Perez and all of the other Aggrieved Employees as set forth above at the end of employment, the Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Perez seeks civil penalties from the 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)).

### **Conclusion**

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Margarita Perez 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

*LWDA / Workforce Personnel, Inc., et al.*  
*Re: Margarita Martinez Perez*  
*September 7, 2022*  
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formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.  
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cc: Margarita Perez  
Louis M. Benowitz Esq.

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## Thank you for your Amended PAGA Claim Notice Submission.

1 message

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**DIR PAGA Unit** <[lwdadonotreply@dir.ca.gov](mailto:lwdadonotreply@dir.ca.gov)>  
To: [stacy.aguirre@spivaklaw.com](mailto:stacy.aguirre@spivaklaw.com)

Mon, Sep 19, 2022 at 4:07 PM

09/19/2022 04:07:36 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)



**\*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL\***

September 19, 2022

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

Re: Margarita Martinez Perez / Workforce Personnel, Inc., et al.  
LWDA Case No.: LWDA-CM-906533-22

To Whom It May Concern:

This is an amended notice and incorporates the original notice dated September 7, 2022 (enclosed) in its entirety.

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Margarita Perez (hereafter “Perez” or “Complainant”) provides notice that Workforce Personnel, Inc., a California Corporation, Diamond Wipes International, Inc., a California corporation, and related entities (collectively “the Employers”) violated her rights and those of all other individuals the Employers have employed directly or indirectly or otherwise contracted with in California as non-exempt, hourly employees, including packers and individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the Employers and their agents and representatives.

The original notice inadvertently stated that Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001. Please note that Perez and all of the other Aggrieved Employees are

*LWDA / Workforce Personnel, Inc., et al.*

*Re: Margarita Martinez Perez*

*September 19, 2022*

*Page 2 of 3*

“employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter the “Wage Order”).

The Wage Order applies to “all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis[.]” Wage Order, § 1. The Wage Order defines “Transportation Industry” to mean, “any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the Employers operated warehousing facilities, and Perez, and all of the Aggrieved Employees worked for, one or more of these establishments operated by Employers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Sincerely,



David G. Spivak Esq.

david@spivaklaw.com

Encls. as stated

cc: Margarita Perez

Louis M. Benowitz Esq.

Workforce Personnel, Inc.

c/o Agent for service of process

Anselmo Soriano

7349 MILLIKEN AVE

#14010

RANCHO CUCAMONGA CA 91730

Diamond Wipes International, Inc.

c/o Agent for service of process

PARACORP INCORPORATED

*LWDA / Workforce Personnel, Inc., et al.*

*Re: Margarita Martinez Perez*

*September 19, 2022*

*Page 3 of 3*

Registered Corporate 1505 Agent  
2804 GATEWAY OAKS DR  
#100  
SACRAMENTO CA 95833



**\*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL\***

September 7, 2022

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

Re: Margarita Martinez Perez / Workforce Personnel, Inc., et al.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Margarita Perez (hereafter “Perez” or “Complainant”) provides notice that Workforce Personnel, Inc., a California Corporation, Diamond Wipes International, Inc., a California corporation, and related entities (collectively “the Employers”) violated her rights and those of all other individuals the Employers have employed directly or indirectly or otherwise contracted with in California as non-exempt, hourly employees, including packers and individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the Employers and their agents and representatives.

At all relevant times, the Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

### **Statement of Facts**

On approximately July 2018, the Employers began to employ Perez in Chino in the position of hourly, non-exempt packer. The Employers continuously employed her in that capacity until on or about September 24, 2021 when her employment ended.

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

The Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Employers required Perez and the Aggrieved Employees to work off the clock without compensation. The Employers required Perez and the Aggrieved Employees to go through security check and also temperature check (during the Coronavirus pandemic) off the clock and before they could clock in. Further, the Employer's time keeping machine often malfunctioned and caused delays, and as a result, Perez and the Aggrieved Employees had to stand and wait in line several minutes every time they wanted to clock in. The Employers also arbitrarily deducted several minutes each day from Perez and the Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

As a result of the off-the-clock work and the deductions described above, the Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek.

As a result of the off-the-clock work and the deductions described above, the Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Employers also failed to include all non-discretionary bonuses when calculating Perez and the other Aggrieved Employees' regular rates of pay for overtime and double-time wage purposes.

At all relevant times, the Employers failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, due to understaffing and lack of coverage, Perez and the Aggrieved Employees often had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a second meal period when they worked more than 10 hours in a workday. The Employers also failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest breaks. Further, due to understaffing and lack of coverage, the Employers often failed to provide Perez and the Aggrieved Employees with all 10-minute rest breaks required by law in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a third rest break when they worked more than 10 hours in a workday. The Employers also failed to pay premium wages for days on which they failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Employers required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Perez and all of the other Aggrieved Employees to supply tools such as tape and utility knife, and box cutter, protective gear and PPE such as gloves, hair net, face mask, goggles or face shield, to perform their job duties. However, the Employers did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items.

At all relevant times, the Employers failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the unpaid wages discussed above.

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

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

- (a) The Employers failed to pay Perez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Employers failed to provide Perez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to provide them with one or more meal periods as required by law;
- (e) The Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Employers failed to indemnify Perez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Employers unlawfully deducted wages belonging to Perez and all of the other Aggrieved Employees;
- (h) The Employers knowingly and intentionally failed to provide Perez and all of the other Aggrieved Employees with accurate and complete wage statements; and



- (i) The Employers willfully failed to timely pay Perez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Employers and when their employment ended.

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

### **The Wage Order**

The Wage Order applies to “all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines "Manufacturing Industry" to mean, “any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part[.]” Wage Order, § 2(H). At all relevant times during the applicable limitations period, the “Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the Employers operated wipes manufacturing and warehousing facilities, and Perez, and all of the Aggrieved Employees worked for, one or more of these establishments operated by Employers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of 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 (7<sup>th</sup>) 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 (7<sup>th</sup>) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

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

The Employers required Perez and the Aggrieved Employees to work off the clock without compensation. The Employers required Perez and the Aggrieved Employees to go through security check and also temperature check (during the Coronavirus pandemic) off the clock and before they could clock in. Further, the Employer's time keeping machine often malfunctioned and caused delays, and as a result, Perez and the Aggrieved Employees had to stand and wait in line several minutes every time they wanted to clock in. The Employers also arbitrarily deducted several minutes each day from Perez and Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole

source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Employers, Perez and all of the other Aggrieved Employees earned bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Employers failed to pay to Perez and all of the other Aggrieved Employees bonuses overtime and double time premium pay on such bonuses.

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

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

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.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal

period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

- (C) 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.
- (D) 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.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the

employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Employers failed to provide Perez and all of the other Aggrieved Employees with all timely meal periods. The Employers denied Perez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, due to understaffing and lack of coverage, Perez and the Aggrieved Employees had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a second meal periods when they worked more than 10 hours in a workday. Furthermore, the Employers failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

Section 2(G) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

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 Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest breaks. Further, due to understaffing and lack of coverage, the Employers often failed to provide Perez and the Aggrieved Employees with all 10-minute rest breaks in workday. The Employers also failed to provide Perez and the Aggrieved Employees with a third rest break when they worked more than 10 hours in a workday. Moreover, the Employers failed to pay Perez and all of the other Aggrieved Employees premium wages on workdays the Employers failed to provide Perez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

Additionally, the Wage Order states,

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

Wage Order, §§ 9(A) and (B).

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

As described above, the Employers required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Perez and all of the other Aggrieved Employees to supply tools, protective gear and PPE to perform their job duties. However, the Employers did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items. Accordingly, Perez seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

### **Unlawful Deductions** **(Lab. Code § 221)**

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As described above, the Employers arbitrarily deducted several minutes each day from Perez and the Aggrieved Employees’ hours worked in violation of Labor Code § 221. Accordingly, Perez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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 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 Employers failed to state in the wage statements they issued to Perez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the earned but unpaid wages described above. Accordingly, Perez seeks civil penalties for the Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

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

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

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

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

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

The Employers failed to pay Perez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perez, including minimum, overtime and premium wages, and related compensation. By failing to pay Perez and all of the other Aggrieved Employees as set forth above at the end of employment, the Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Perez seeks civil penalties from the 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)).

### **Conclusion**

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Margarita Perez 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

*LWDA / Workforce Personnel, Inc., et al.*  
*Re: Margarita Martinez Perez*  
*September 7, 2022*  
*Page 19 of 19*

formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,

David G. Spivak Esq.  
david@spivaklaw.com  
cc: Margarita Perez  
Louis M. Benowitz Esq.

Workforce Personnel, Inc.  
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Anselmo Soriano  
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PARACORP INCORPORATED  
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# **EXHIBIT 5**





THE SPIVAK LAW FIRM  
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**\*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL\***

June 22, 2025

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

Re: Maria De La Luna Huerta / Workforce Personnel, Inc., et al.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Maria De La Luna Huerta (hereafter “Huerta” or “Complainant”) provides notice that Workforce, a California Corporation, Diamond Wipes International, Inc., a California corporation, and related entities (collectively “the Employers”) violated her rights and those of all other individuals the Employers have employed directly or indirectly or otherwise contracted with in California as non-exempt, hourly employees, including packers and individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Huerta hereby provides this notice to the Labor & Workforce Development Agency and the Employers and their agents and representatives.

At all relevant times, the Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Huerta and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. No. 9-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

### **Statement of Facts**

In August of 2022, the Employers began to employ De La Luna Huerta in Chino in the position of hourly, non-exempt operator and packer on the production line. She remained employed in that position for approximately five months, at which point her employment ended.

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

The Employers failed to compensate Huerta and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Employers required Huerta and the Aggrieved Employees to work off the clock without compensation.. The Employers also arbitrarily deducted several minutes each day from Huerta and the Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

As a result of the deductions described above, the Employers failed to compensate Huerta and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek.

As a result of the unpaid hours described above, the Employers failed to compensate Huerta and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight (8) in a day.

At all relevant times, the Employers failed to provide Huerta and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Further, due to understaffing and lack of coverage, Huerta and the Aggrieved Employees often had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to pay premium wages for days on which they failed to provide Huerta and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Employers failed to authorize and permit Huerta and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Employers also failed to pay premium wages for days on which they failed to authorize and permit Huerta and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Employers required Huerta and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Huerta and all of the other Aggrieved Employees to supply protective gear such as slip resistant shoes to perform their job duties. However, the Employers did not provide these items and did not reimburse Huerta and the other Aggrieved Employees for these items.

At all relevant times, the Employers failed to issue to Huerta and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Employers knowingly and intentionally failed to state on the wage statements they issued to Huerta and all of the other Aggrieved Employees the unpaid wages discussed above.

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

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

- (a) The Employers failed to pay Huerta and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Employers failed to provide Huerta and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Employers failed to authorize and permit Huerta and all of the other Aggrieved Employees to take rest breaks in compliance with California law;

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

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

### **The Wage Order**

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis[.]" Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services

in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the Employers operated warehousing facilities, and Perez, and all of the Aggrieved Employees worked for, one or more of these establishments operated by Employers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of 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 (7<sup>th</sup>) 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 (7<sup>th</sup>) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching

out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

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

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

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

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.

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) 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.
- (D) 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.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

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.

As discussed above, at all relevant times, the Employers failed to provide Huerta and all of the other Aggrieved Employees with all timely, 30-minute, duty-free meal periods. Furthermore, the Employers failed to pay premium wages for days on which they failed to provide Huerta and all of the other Aggrieved Employees with timely meal periods. Accordingly, Huerta now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

Section 2(G) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

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.

As discussed above, at all relevant times, the Employers failed to authorize and permit Huerta and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Moreover, the Employers failed to pay Huerta and all of the other Aggrieved Employees premium wages on workdays the Employers failed to provide Huerta and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Huerta now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

Additionally, the Wage Order states,

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

...

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

Wage Order, §§ 9(A) and (B).

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

As described above, the Employers required Huerta and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. However, the Employers did not provide these items and did not reimburse Huerta and the other Aggrieved Employees for these items. Accordingly, Huerta seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

///

**Unlawful Deductions**  
**(Lab. Code § 221)**

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As described above, the Employers arbitrarily deducted several minutes each day from Huerta and the Aggrieved Employees’ hours worked in violation of Labor Code § 221. Accordingly, Huerta seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5) .

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

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

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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 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 Employers failed to state in the wage statements they issued to Huerta and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, all regular and overtime wages (as described above). The Employers knowingly and intentionally failed to state on the wage statements they issued to Huerta and all of the other Aggrieved Employees the earned but unpaid wages described above. Accordingly, Huerta seeks civil penalties for the Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

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

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

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

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

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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 Employers failed to pay Huerta and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Huerta, including minimum, overtime and premium wages, and related compensation. By failing to pay Huerta and all of the other Aggrieved Employees as set forth above at the end of employment, the Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Huerta seeks civil penalties from the 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)).

### **Conclusion**

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Maria De La Luna Huerta 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

*LWDA / Workforce Personnel, Inc., et al.*  
*Re: Maria De La Luna Huerta*  
*June 22, 2025*  
*Page 18 of 18*

a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.  
david@spivaklaw.com

cc: Maria De La Luna Huerta  
Louis M. Benowitz Esq.

Diamond Wipes International Inc.  
c/o Alfred Landegger, Esq.  
Evelyn Zarraga, Esq.  
Arthur Connors, Esq.  
Joseph Sklar, Esq.  
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Workforce Personnel, Inc.  
c/o Gordon C. Strange, Esq.  
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# **EXHIBIT 6**

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7 Attorneys for Plaintiff(s),  
8 MARGARITA PEREZ, and all others similarly situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN BERNARDINO**  
11 **(UNLIMITED JURISDICTION)**

12 MARGARITA PEREZ and MARIA DE  
13 LA LUNA HUERTA on behalf of  
14 themselves and all others similarly  
15 situated, and the general public, and as  
16 “Aggrieved Employees” on behalf of other  
“Aggrieved Employees” and the State of  
California under the Labor Code Private  
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.  
19

20 WORKFORCE PERSONNEL, INC.,  
21 California Corporation; DIAMOND  
WIPES INTERNATIONAL, INC.,  
22 California Corporation; and DOES 1–50,  
23 inclusive,

24 *Defendant(s).*

ELECTRONICALLY FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT  
11/14/2025 9:13 AM  
By: Mariah Mora, DEPUTY

Case No. CIVSB2220822

**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 §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (ab. Code §§ 2698, et seq.)

**JURY TRIAL DEMANDED**



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**ADDITIONAL ATTORNEY(S) FOR PLAINTIFF(S)**

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1 Plaintiffs Margarita Perez (hereafter “Plaintiff Perez” or “Perez”) and Maria De La Luna  
2 Huerta (hereafter “Plaintiff Huerta” or “Huerta”) on behalf of themselves and all others similarly  
3 situated, the general public, and as an “aggrieved employee” on behalf of other “aggrieved  
4 employees” and the State of California under the Labor Code Private Attorneys General Act of  
5 2004, complain and allege as follows:

6 **I. INTRODUCTION**

7 1. Plaintiffs bring this class and representative action for alleged violations of the  
8 California Labor Code, Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage  
9 Order”), and the California Business and Professions Code against Defendants Workforce  
10 Personnel, Inc., a California Corporation, Diamond Wipes International, Inc., a California  
11 Corporation, and Does 1 through 50, inclusive (collectively “Defendants”).

12 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to  
13 them and other similarly situated workers for unpaid wages, statutory and civil penalties, interest,  
14 and related relief. These claims are based on Defendants’ failures to:

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

17 (B) Provide all meal periods;

18 (C) Authorize and permit all rest breaks;

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

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

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

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

23 (H) Timely pay wages upon termination of employment

24 Accordingly, Plaintiffs now seek to recover unpaid wages, interest, liquidated damages,  
25 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

26 **II. THE PARTIES**

27 3. Plaintiffs are residents of California.

28 4. At all relevant times, Plaintiffs were an “employees” within the meaning of Title 8  
California Code of Regulations Section 11090, and an “aggrieved employee” within the meaning  
of California Labor Code § 2699(c).



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5. Defendant Workforce Personnel, Inc. is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiffs' information and belief.

6. Defendant Diamond Wipes International, Inc. is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiffs' information and belief.

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

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

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, practice, or a lack of a practice which resulted in Defendants not compensating Plaintiffs and the other Class Members or otherwise complying with their rights in accordance with applicable California labor laws as alleged herein.

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

### III. CLASS ALLEGATIONS

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



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as a class action.

12. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California as non-exempt, hourly employees, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, at any time during the period beginning on September 19, 2018 (four years prior to the filing of this action) and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

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

14. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiffs do not currently know the exact number of Class Members, Plaintiffs are informed and believe that the actual number exceeds the minimum required for numerosity under California laws.

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

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

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

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

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

E. Whether Defendants knowingly and intentionally failed to issue to the class accurate and complete itemized wage statements;

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

G. Whether Defendants engaged in unfair competition within the meaning of



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Business and Professions Code sections 17200, et seq., with respect to the Class; and

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

16. **Typicality:** Plaintiffs' claims are typical of the other Class Members' claims. Plaintiffs are informed and believe and thereon allege 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.

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

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

19. **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**

20. IWC Wage Order 9-2001 ("the Wage Order") applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis" Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to



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1 another whether by rail, highway, air, or water, and all operations and services in connection  
2 therewith; and also includes storing or warehousing of goods or property, and the repairing,  
3 parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times  
4 during the applicable limitations period, Defendants, Plaintiffs, and all of the Class Members were  
5 covered by the Wage Order because Defendants operated, and Plaintiffs, and all of the Class  
6 Members worked for, one or more establishments operated as a warehouse. Accordingly,  
7 Plaintiffs and all of the other Class Members are entitled to the protections the Wage Order  
8 provides.

9 21. On approximately July 2018, Defendants began to employ Perez in Chino in the  
10 position of hourly, non-exempt packer. Defendants continuously employed her in that capacity  
11 until on or about September 23, 2021 when her employment ended.

12 22. In August of 2022, Defendants began to employ De La Luna Huerta in Chino in  
13 the position of hourly, non-exempt operator and packer on the production line. She remained  
14 employed in that position for approximately five months, at which point her employment ended.

15 23. At all relevant times, Defendants issued wages to Plaintiffs and all of the other  
16 Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant  
17 times, Defendants classified Plaintiffs and all of the other Class Members as non-exempt  
18 employees entitled to the protections of the Labor Code and the Wage Order.

19 24. At all relevant times, Defendants failed to compensate Plaintiffs and all of the other  
20 Class Members for all hours worked at the applicable minimum or regular rates of pay.  
21 Defendants required Plaintiffs and the Class Members to work off the clock without  
22 compensation. For example, Defendants required Perez and the Class Members to submit to  
23 security checks and temperature checks off the clock and without pay before they could clock in.  
24 Further, frequent malfunctions of Defendants’ time keeping required Plaintiffs and the Class  
25 Members wait for several minutes to record entries and exits from duty. Defendants also  
26 arbitrarily deducted several minutes each day from Plaintiffs and Class Members’ hours worked  
27 and failed to compensate them for all hours worked.

28 25. At all relevant times, Defendants failed to compensate Plaintiffs and all of the other  
Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a  
week, and for the first eight hours of the seventh day of the workweek. Time spent in the activities  
described above, combined with other hours worked by Plaintiffs and the Class Members, resulted



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1 in Plaintiffs and the Class Members working overtime hours. However, Defendants did not pay  
2 overtime premium wages to Plaintiffs and the Class Members for such work time.

3 26. At all relevant times, Defendants failed to compensate Plaintiffs and all of the other  
4 Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over the  
5 first eight of the seventh day of the workweek. Time spent in the activities described above,  
6 combined with other hours worked by Plaintiffs and the Class Members resulted in Plaintiffs and  
7 the Class Members working doubletime hours. However, Defendants did not pay doubletime  
8 premium wages to Plaintiffs and the Class Members for such work time.

9 27. At all relevant times, Defendants failed to provide Plaintiffs and all of the other  
10 Class Members with all timely 30-minute, off-duty meal periods. Defendants prohibited Plaintiffs  
11 and the other Class Members from leaving the premises during their meal periods. Further,  
12 understaffing by Defendants compelled Plaintiffs and the Class Members to delay their meal  
13 periods and take their meal periods after they had already worked for more than five (5) hours in  
14 a workday. Defendants also failed to provide Plaintiffs and the Class Members with a second  
15 meal period when they worked more than 10 hours in a workday. Defendants also failed to pay  
16 premium wages for days on which they failed to provide Plaintiffs and all of the other Class  
17 Members with meal periods as required by law.

18 28. At all relevant times, Defendants failed to authorize and permit Plaintiffs and all  
19 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked  
20 or major portion thereof. Defendants prohibited Plaintiffs and the other Class Members from  
21 leaving the premises during their rest periods. Further, understaffing by Defendants compelled  
22 Plaintiffs and the Class Members to delay their rest periods for more than four hours into their  
23 daily work shifts. Defendants also failed to provide Plaintiffs and the Class Members with three  
24 periods when they worked more than 10 hours in a workday. Defendants also failed to pay  
25 premium wages for days on which they failed to authorize and permit Plaintiffs and all of the  
26 other Class Members to take rest breaks as required by law.

27 29. At all relevant times, Defendants required Plaintiffs and all of the other Class  
28 Members to incur certain business expenses in the course of performing their duties. Defendants  
required Plaintiffs and all of the other Class Members to supply tools, protective gear and PPE  
such as slip resistant shoes to perform their job duties to perform their job duties. However,  
Defendants did not provide these items and did not reimburse Plaintiffs and the other Class



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Members for these items.

30. At all relevant times, Defendants failed to issue to Plaintiffs and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the wage statements they issued to Plaintiffs and all of the other Class Members the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related information.

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

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

33. For the reasons stated herein, Plaintiffs allege that as a result of Defendants' unlawful practices and policies, Plaintiffs and the Class Members were:

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

### **FIRST CAUSE OF ACTION**

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

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



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(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

34. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

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

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

37. 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 (7<sup>th</sup>) 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 (7<sup>th</sup>) consecutive day of work in a workweek. 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.

38. 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.

39. Labor Code section 510 states:



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

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

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

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

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

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

45. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiffs and the other Class Members for all hours worked at the correct rates of pay as required by California law.

**B. UNPAID REPORTING TIME PAY**

46. Under Section 5 of the Wage Order



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[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

47. Defendants required Plaintiffs and all of the other Class Members to report for a full day of work (eight or more hours) and, instead of furnishing them with half of more of their usual scheduled day's work, sent them home. Furthermore, Defendants failed to pay Plaintiffs and all of the other Class Members at least two (2) hours at their regular rates of pay. This is a violation of the Wage Order and also the Labor Code (§ 1198).

48. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiffs and the other Class Members at least two (2) hours at their regular rates of pay as required by California law.

**C. FAILURE TO PAY SPLIT SHIFT PREMIUMS**

49. Wage Order § 2(M) defines a "Shift" as "designated hours of work by an employee, with a designated beginning time and quitting time." A "Split shift" is defined by § 2 (N) as "a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

50. Wage Order § 4(C) pertaining to "Minimum Wages" states: "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

51. Under Labor Code § 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."

52. Defendants directed Plaintiffs and all of the Class Members to regularly work split shifts. However, Defendants intentionally failed to pay Plaintiffs and all of the Class Members the equivalent of a sum greater than one hour's pay at the minimum wage in addition to the minimum wage for a workday. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiffs and the other Class Members the equivalent of a sum greater



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1 than one hour's pay at the minimum wage in addition to the minimum wage for a workday as  
2 required by California law.

3 53. In so doing, Defendants violated Labor Code §§ 1197 and 1198.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL PERIODS**

6 **Lab. Code §§ 226.7 and 512**

7 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

8 54. Plaintiffs incorporate all paragraphs of this complaint as if fully alleged herein.

9 55. At all relevant times during the applicable limitations period, Plaintiffs 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 56. 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 57. 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.

58. 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



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1 than five (5) hours without a meal period of not less than 30  
2 minutes, except that when a work period of not more than six (6)  
3 hours will complete the day's work the meal period may be waived  
4 by mutual consent of the employer and the employee.

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

11 (C) Unless the employee is relieved of all duty during a 30 minute meal  
12 period, the meal period shall be considered an "on duty" meal  
13 period and counted as time worked. An "on duty" meal period shall  
14 be permitted only when the nature of the work prevents an  
15 employee from being relieved of all duty and when by written  
16 agreement between the parties an on-the-job paid meal period is  
17 agreed to. The written agreement shall state that the employee  
18 may, in writing, revoke the agreement at any time.

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

24 (E) In all places of employment where employees are required to eat  
25 on the premises, a suitable place for that purpose shall be  
26 designated.

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

28 (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



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Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

60. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs 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.

61. As discussed above, Defendants intentionally failed to provide Plaintiffs and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiffs and the other Class Members with timely meal periods.

62. Plaintiffs are informed and believe and thereon allege that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

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

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

### **THIRD CAUSE OF ACTION**

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

##### **Lab. Code § 226.7**

##### **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

65. Plaintiffs incorporate all paragraphs of this complaint as if fully alleged herein.

66. At all relevant times during the applicable limitations period, Plaintiffs 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.

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



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

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

6 Rest Periods:

7  
8 (A) Every employer shall authorize and permit all employees to take  
9 rest periods, which insofar as practicable shall be in the middle of  
10 each work period. The authorized rest period time shall be based  
11 on the total hours worked daily at the rate of ten (10) minutes net  
12 rest time per four (4) hours or major fraction thereof. However, a  
13 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.

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

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

19  
20 (b) An employer shall not require an employee to work during  
21 a meal or rest period mandated pursuant to an applicable  
22 statute, or applicable regulation, standard, or order of the  
23 Industrial Welfare Commission, the Occupational Safety  
and Health Standards Board, or the Division of  
Occupational Safety and Health.

24 (c) If an employer fails to provide an employee a meal period  
25 or rest period in accordance with a state law, including, but  
26 not limited to, an applicable statute or applicable  
27 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  
28 additional hour of pay at the employee's regular rate of



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

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

6 71. As discussed above, Defendants intentionally failed to authorize and permit  
7 Plaintiffs and the Class Members to take all 10-minute rest periods free from any work duties in  
8 accordance with the Wage Order. Furthermore, Defendants failed to pay premium wages to  
9 Plaintiffs and the Class Members for days on which they failed to authorize and permit Plaintiffs  
10 and the other Class Members to take timely rest periods.

11 72. Plaintiffs are informed and believe and thereon allege that, at all relevant times  
12 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy  
13 which resulted in Defendants not authorizing and permitting Plaintiffs and the Class Members to  
14 take all rest breaks required by California law.

15 73. Defendants failed to provide Plaintiffs with all required rest breaks in accordance  
16 with the Wage Order. Plaintiffs are informed and believe and thereon allege that, at relevant times  
17 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy  
18 which resulted in Defendants not providing the Class Members with all rest breaks required by  
19 California law.

20 74. Defendants failed to pay Plaintiffs the additional wages required by California  
21 Labor Code § 226.7 for all rest breaks not provided to them. Plaintiffs are informed and believe  
22 and thereon allege 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  
25 California Labor Code § 226.7.

26 75. As a result of Defendants' unlawful conduct, Plaintiffs and the Class Members  
27 have suffered damages in amounts subject to proof to the extent they were not paid additional  
28 wages owed for all rest breaks not provided to them.

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



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**FOURTH CAUSE OF ACTION**

**FAILURE TO INDEMNIFY**

**Lab. Code § 2802**

**(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

77. Plaintiffs incorporate all paragraphs of this complaint as if fully alleged herein.

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

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

...

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

Wage Order, § 9(A) and (B).

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

80. At all relevant times, Defendants required Plaintiffs and the Class Members to incur certain business expenses in the course of performing their duties.

81. As described above, Defendants required Plaintiffs and all of the other Class Members to incur certain business expenses in the course of performing their duties. Defendants did not provide these tools to Plaintiffs and the other Class members they required them to use to perform their work, nor did they reimburse them for such tools.

82. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to indemnify Plaintiffs and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

**FIFTH CAUSE OF ACTION**



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

2 **Lab. Code § 226**

3 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

4 83. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

5 84. Pursuant to California Labor Code § 226(a), Plaintiffs and the Class Members  
6 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate  
7 itemized statement showing:

8 A. Gross wages earned;

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

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

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

16 E. Net wages earned;

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

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

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

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

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

A. The amount of the gross wages or net wages paid to the employee during  
the pay period or any of the other information required to be provided on the itemized wage



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1 statement pursuant to California Labor Code § 226(a);

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

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

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

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

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

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

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

17 (1) all deductions;

18 (2) the inclusive dates of the period for which the employee is paid;

19 (3) the name of the employee or the employee’s social security number; and

20 (4) the name of the employer, provided all deductions made on written orders  
21 of the employee may be aggregated and shown as one item. (See Labor  
22 Code Section 226.)

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

25 88. As alleged herein, at all relevant times during the applicable limitations period,  
26 Defendants violated California Labor Code section 226 because they did not properly and  
27 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,  
28 the corresponding number of hours worked at each rate by the employee and other requirements  
of California Labor Code section 226. Defendants failed to state in the wage statements they  
issued to Plaintiffs and the other Class Members all their hours worked and wages earned,



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1 including, but not limited to, regular and overtime wages for work they performed off-the-clock  
2 after clocking-out (as described above). Defendants knowingly and intentionally did not issue  
3 either as a detachable part of the check, draft, or voucher paying the employee's wages, or  
4 separately if wages are paid by personal check or cash, statements to Plaintiffs and the Class  
5 Members that state all minimum wages earned, all regular wages earned, all overtime wages  
6 earned, all doubletime wages earned, all meal period premium wages earned, all rest break  
premium wages earned, and other required information.

7 89. Defendants' failure to provide Plaintiffs and the other Class Members with  
8 accurate wage statements was knowing and intentional. Defendants had the ability to provide  
9 Plaintiffs and the other Class Members with accurate wage statements but intentionally provided  
10 wage statements that Defendants knew were not accurate.

11 90. As a result of being provided with inaccurate wage statements by Defendants,  
12 Plaintiffs and the other Class Members have suffered injury. Their legal rights to receive accurate  
13 wage statements were violated and they were misled about the amount of wages they had actually  
14 earned and were owed. In addition, the absence of accurate information on their wage statements  
15 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery  
16 and mathematical computations to determine the amounts of wages owed, has caused difficulty  
17 and expense in attempting to reconstruct time and pay records and/or has led to the submission of  
18 inaccurate information about wages to state and federal government agencies. Further, Plaintiffs  
19 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).

## 20 **SIXTH CAUSE OF ACTION**

### 21 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

#### 22 **Lab. Code §§ 201, 202, and 203**

#### 23 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

24 91. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

25 92. At all relevant times during the applicable limitations period, Plaintiffs and the  
26 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.

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



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1 94. 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 least  
4 72-hours notice before quitting are due and payable within 72 hours.

5 95. Defendants failed to pay Plaintiffs and all of the other Class Members whose  
6 employment ended all of the earned but unpaid wages described above by the conclusion of their  
7 employment with Plaintiffs, including minimum wages, regular wages, overtime wages,  
8 doubletime wages, unprovided meal period premium wages, unauthorized rest break premium  
9 wages, and related compensation.

10 96. By failing to pay such earned wages to Plaintiffs and the Class Members,  
11 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code  
12 § 201 or § 202.

13 97. Plaintiffs are informed and believe that Defendants' failures to timely pay  
14 Plaintiffs and the Class Members all of their earned and unpaid wages (described above) have  
15 been willful in that, at all relevant times, Defendants have deliberately maintained policies and  
16 practices that violate the requirements of the Labor Code and the Wage Order, even though at all  
17 relevant times, they have had the ability to comply with those legal requirements.

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

## 21 **SEVENTH CAUSE OF ACTION**

### 22 **UNFAIR COMPETITION**

#### 23 **Bus. & Prof. Code §§ 17200, *et seq.***

#### 24 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

25 99. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

101. The unlawful conduct of Defendants alleged herein amount to and constitutes  
unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly



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1 gained a competitive advantage over other comparable companies doing business in California  
2 that comply with their legal obligations to compensate employees for all earned wages.

3 102. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and the  
4 Class Members have suffered injuries in fact and lost money or property. Plaintiffs and the Class  
5 Members were deprived of minimum wages, regular wages, overtime wages, doubletime wages,  
6 missed meal period premium wages, missed rest period premium wages, tool and supplies  
7 expenses, and comparable money and property.

8 103. Pursuant to California Business & Professions Code § 17203, Plaintiffs 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.

12 104. Plaintiffs 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 **EIGHTH CAUSE OF ACTION**

### 16 **CIVIL PENALTIES**

17 **(Lab. Code §§ 2698, *et seq.*)**

18 **(By Plaintiffs, on behalf of themselves and the other Aggrieved Employees,**  
19 **against all Defendants)**

20 105. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

21 106. The "Aggrieved Employees" are all individuals Defendants employed in  
22 California as non-exempt, hourly employees, including non-exempt, hourly assistant general  
23 managers and store managers, and persons in other comparable positions, at any time during the  
24 period beginning September 7, 2021 and ending on the date that final judgment is entered in this  
25 action.

26 107. At all relevant times, Plaintiffs and the Aggrieved Employees have been non-  
27 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

28 108. Labor Code § 204 states

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



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the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

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

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

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

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

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

108. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

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

110. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the Class are entitled to recover civil penalties for each of Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

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

B. For violations of California Labor Code § 221, one hundred dollars (\$100) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200) for each



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Office:

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Fl 7  
Los Angeles, CA 90067

1 Aggrieved Employee for each subsequent violation, or any willful or intentional violation  
2 (penalty amounts established by California Labor Code § 225.5).

3 C. For violations of California Labor Code § 226(a), two hundred fifty dollars  
4 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)  
5 for each Aggrieved Employee for each subsequent violation (penalty amounts established by  
6 California Labor Code § 226.3).

7 D. For violations of California Labor Code §§ 510 and 512, fifty dollars  
8 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for  
9 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts  
10 established by California Labor Code § 558).

11 E. For violations of California Labor Code § 1197, one hundred dollars  
12 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred  
13 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period  
14 (regardless of whether the initial violations were intentionally committed) (penalty amounts  
15 established by California Labor Code § 1197.1).

16 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,  
17 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for  
18 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay  
19 period for each subsequent violation (penalty amounts established by California Labor Code §  
20 2699(f)(2)).

21 111. Perez has complied with the procedures for bringing suit specified in California  
22 Labor Code § 2699.3. By letters dated September 7, 2022 and September 19, 2022, Perez filed  
23 written notices online with the Labor and Workforce Development Agency (“LWDA”) and gave  
24 written notices by certified mail to Defendants of the specific provisions of the California Labor  
25 Code alleged to have been violated, including the facts and theories to support the alleged  
26 violations. True and correct copies of the notices to the LWDA dated September 7, 2022 and  
27 September 19, 2022 are attached collectively as Exhibit A. Perez accompanied her LWDA notice  
28 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 Perez’s notice, but Perez anticipates that the LWDA will provide  
written notice to Perez informing her that it does not intend to investigate these allegations.

112. Huerta has complied with the procedures for bringing suit specified in California



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1 Labor Code § 2699.3. By a letter dated June 23, 2025, Huerta filed written notices online with the  
2 LWDA and gave written notices by certified mail to Defendants of the specific provisions of the  
3 California Labor Code alleged to have been violated, including the facts and theories to support  
4 the alleged violations. A true and correct copy of this notice to the LWDA is attached as Exhibit  
5 B. Huerta accompanied her LWDA notice with a fee in the amount of \$75.00. Huerta anticipates  
6 that the LWDA will provide written notice informing her that it does not intend to investigate  
7 these allegations.

8 113. Pursuant to California Labor Code § 2699(g), Plaintiffs and the Aggrieved  
9 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in  
10 connection with their claims for civil penalties.

#### 11 **V. PRAYER FOR RELIEF**

12 114. WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members, pray  
13 for relief and judgment against Defendants as follows:

- 14 A. An order that the action be certified as a class action with respect to  
15 Plaintiffs' claims for violations of California law;
- 16 B. An order that Plaintiffs be appointed class representative;
- 17 C. An order that counsel for Plaintiffs be appointed class counsel;
- 18 D. Unpaid wages, including minimum, regular, overtime, double-time,  
19 missed meal period, and missed rest period wages;
- 20 E. Liquidated damages;
- 21 F. Statutory penalties, including waiting time penalties;
- 22 G. Civil penalties;
- 23 H. Restitution;
- 24 I. Declaratory relief;
- 25 J. Actual damages;
- 26 K. Pre-judgment interest;
- 27 L. Costs of suit;
- 28 M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

#### **VI. DEMAND FOR JURY TRIAL**

Plaintiffs, on behalf of themselves and all other Class Members, hereby demand a jury



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1 trial on all issues so triable.

2  
3 Respectfully submitted,

4 THE SPIVAK LAW FIRM

5 Dated: September 23, 2022

6 By:

7   
8 DAVID G. SPIVAK,  
9 CAROLINE TAHMASSIAN,  
10 Attorneys for Plaintiff(s)



25 SPIVAK LAW  
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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  
7 party to the within action. My business address is 1875 Century Park East, Fl  
8 7, Los Angeles, CA 90067.

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

14 On Friday, November 14, 2025, I served the foregoing document described  
15 as **FIRST AMENED COMPLAINT** on interested parties by electronic mail,  
16 addressed as follows:

17 **Alfred Landegger, Esq.**  
18 **Evelyn Zarraga, Esq.**  
19 **Arthur Connors, Esq.**  
20 **Joseph Sklar, Esq.**  
21 **Landegger Verano & Davis, ALC**  
22 **15760 Ventura Blvd., Suite 1200**  
23 **Encino CA 91436**  
24 [alfred@landeggeresq.com](mailto:alfred@landeggeresq.com)  
25 [Evelyn@landeggeresq.com](mailto:Evelyn@landeggeresq.com)  
26 [arthur@landeggeresq.com](mailto:arthur@landeggeresq.com)  
27 [joseph@landeggeresq.com](mailto:joseph@landeggeresq.com)  
28 [ida@landeggeresq.com](mailto:ida@landeggeresq.com)

**Gordon C. Strange, Esq.**  
**Law Offices of Gordon C. Strange**  
**15333 Culver Drive, Suite 340-223**  
**Irvine, CA 92604**  
[g.strange@edlapc.com](mailto:g.strange@edlapc.com)

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

EXECUTED on Friday, November 14, 2025, at Riverside, California.

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

27   
28 LIZZETT CORTEZ

# **EXHIBIT 7**



# Raosoft Calculator

Population Size

335

Margin of Error (%)

15

Confidence Level

95%

Response Distribution (%)

50

## Results (Forward)

Required Sample Size (infinite population): 43

Adjusted Sample Size (finite population): 38

## Multi-Confidence Table

Based on your Margin of Error and Response Distribution.

| Confidence Level | Z-score | Sample Size (∞ population) | Sample Size (finite pop) |
|------------------|---------|----------------------------|--------------------------|
| 80%              | 1.2816  | 19                         | 18                       |
| 85%              | 1.4395  | 24                         | 22                       |
| 90%              | 1.6449  | 31                         | 28                       |
| 95%              | 1.9600  | 43                         | 38                       |
| 99%              | 2.5758  | 74                         | 61                       |

Determining the right sample size can make or break your research project. Too small, and your findings won't represent your target population. Too large, and you're wasting valuable time and resources. The Raosoft sample size calculator has become the go-to solution for researchers, students, and data analysts who need accurate sample size calculations quickly and efficiently.

# Understanding Key Sample Size Concepts

Before diving into the calculator itself, it's essential to grasp the fundamental concepts that drive sample size calculations.

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## Sample Size

Sample size refers to the number of participants or observations you include in your study. This number directly impacts the reliability and validity of your research findings. A well-calculated sample size ensures your results accurately reflect the characteristics of your entire target population.

The challenge lies in finding the sweet spot large enough to be statistically meaningful, yet practical enough to execute within your constraints of time, budget, and resources.

## Margin of Error

The margin of error represents the amount of uncertainty you're willing to accept in your results. Expressed as a percentage, it creates a range around your sample statistic within which the true population parameter likely falls.

For instance, if your survey reveals that 60% of respondents prefer a particular product with a margin of error of  $\pm 3\%$ , you can be confident that between 57% and 63% of the entire population shares this preference. Common margin of error values range from 1% to 10%, with 5% being widely accepted across many research fields.

## Confidence Level

Your confidence level indicates how certain you can be that your sample results fall within the specified margin of error. This statistical measure is expressed as a percentage, with 90%, 95%, and 99% being the most frequently used levels.

A 95% confidence level means that if you repeated your study 100 times with different samples from the same population, approximately 95 of those studies would produce results within your margin of error. Higher confidence levels provide greater certainty but require larger sample sizes.

## Population Size

Population size

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for smaller populations, this factor becomes increasingly important in your calculations.

## Response Distribution

Response distribution reflects the expected variability in your survey responses. A 50% response distribution assumes maximum variability, where responses are split evenly between options. This conservative approach typically yields the largest recommended sample size, making it the safest choice when you're uncertain about response patterns.

# How to Use the Raosoft Calculator: A Step-by-Step Guide

Using the Raosoft sample size calculator is straightforward, but understanding each input ensures accurate results.

## Step 1: Set Your Margin of Error

Begin by determining your acceptable margin of error. Enter this value as a percentage in the designated field. Remember that lower margins of error require larger sample sizes but provide more precise results.

## Step 2: Choose Your Confidence Level

Select your desired confidence level from the dropdown menu. Most academic research uses 95%, while market research often accepts 90%. Critical medical or safety studies may require 99% confidence.

## Step 3: Enter Population Size

Input your total population size. If you're studying a very large or unknown population, use 20,000 or higher, as the calculator's recommendations won't change significantly beyond this point.

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Unless you have specific expectations about response patterns, leave this at 50%. This conservative approach ensures your sample size will be adequate regardless of how responses actually distribute.

## Step 5: Calculate and Review Results

Click calculate to receive your recommended sample size. The tool also provides alternative scenarios, showing how different confidence levels or sample sizes would affect your margin of error.

## Example Calculation

Let's work through a practical example. Suppose you're conducting market research for a new product launch:

- Margin of Error: 4%
- Confidence Level: 95%
- Population Size: 50,000 potential customers
- Response Distribution: 50%

The calculator recommends a sample size of 601 respondents. This means surveying 601 people would give you 95% confidence that your results are within 4% of the true population values.

## Interpreting Your Results

Understanding your calculator results goes beyond simply noting the recommended sample size. The tool provides valuable insights that can inform your research strategy.

## Minimum Sample Size

The primary result shows the minimum number of participants needed to meet your specified statistical requirements. This represents the threshold for reliable results, assuming you achieve 100% response rate from your selected sample.

## Alternative Scenarios

Pay attention to the alternative scenarios section. This feature demonstrates how adjusting your parameters affects sample size requirements. For example, you might discover that accepting a slightly larger margin of error could significantly reduce your sample size needs, making your study more feasible.

## Practical Considerations

Remember that the calculated sample size assumes random sampling and

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add a 10-20% buffer to their calculated sample size to compensate for these factors.

## Real-World Applications of Sample Size Calculations

Understanding how different industries and research contexts apply sample size calculations helps illustrate the tool's versatility.

### Market Research

A company developing a new smartphone wants to understand consumer preferences across different age groups. Using the Raosoft calculator, they determine they need 384 respondents for a 95% confidence level with a 5% margin of error. This sample size ensures their product development decisions are based on statistically reliable consumer insights.

### Political Polling

A polling organization preparing for election coverage calculates sample sizes for different demographic segments. For statewide polls, they use 1,068 respondents to achieve 95% confidence with a 3% margin of error. This precision allows them to make accurate predictions while efficiently allocating their surveying resources.

### Healthcare Surveys

A hospital system evaluating patient satisfaction across its network of facilities needs reliable feedback data. They calculate a sample size of 322 patients per facility for 95% confidence with a 5% margin of error. This approach ensures each facility's results are statistically meaningful while keeping the survey manageable.

### Academic Research

A university researcher studying student learning outcomes in online versus traditional courses needs sufficient sample sizes for both groups. Using the calculator, they determine that 246 students per group will provide 95% confidence with a 6% margin of error, making their comparative analysis statistically robust.

### Quality Control

A manufacturing company implements statistical quality control processes for their production line. They use sample size calculations to determine how many products to inspect hourly, ensuring they can detect quality issues.

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# The Importance of Sample Size in Research Success

Proper sample size calculation forms the foundation of credible research. Undersized studies may miss important effects or relationships, while oversized studies waste resources that could be better allocated elsewhere.

## Statistical Power

Adequate sample sizes ensure your study has sufficient statistical power to detect meaningful differences or relationships. Underpowered studies often produce inconclusive results, potentially requiring costly follow-up research.

## Resource Optimization

Calculating optimal sample sizes helps balance statistical rigor with practical constraints. You'll avoid the expense of unnecessarily large samples while ensuring your results meet scientific standards.

## Credibility and Publication

Research with properly calculated sample sizes is more likely to be accepted by peer reviewers and journal editors. Clear justification of sample size decisions demonstrates methodological rigor and statistical competence.

## Frequently Asked Questions

### What if my population size is infinite or unknown?

When dealing with very large or unknown populations, use a large number such as 1,000,000 in the population size field. For populations larger than 20,000, the sample size doesn't change significantly, so any large number will provide accurate results.

### How does changing the confidence level affect the sample size?

Increasing your confidence level requires a larger sample size because you're demanding greater certainty in your results. Moving from 90% to 95% confidence typically increases sample size requirements by about 40%, while jumping to 99% confidence nearly doubles the needed sample size.

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## Can I use the Raosoft calculator for qualitative research?

The Raosoft calculator is specifically designed for quantitative research involving numerical data and statistical analysis. Qualitative research typically uses different approaches to determine appropriate sample sizes, focusing on data saturation rather than statistical power.

## Maximize Your Research Impact

The Raosoft sample size calculator serves as an invaluable tool for researchers across disciplines. By understanding the key concepts, following proper procedures, and interpreting results correctly, you can design studies that produce reliable, actionable insights while making efficient use of your resources.

Remember that sample size calculation is just the beginning of good research design. Consider factors such as sampling methods, survey design, data collection procedures, and analysis plans to ensure your study achieves its objectives.

Ready to determine the perfect sample size for your next research project? **Calculate your sample size today** using our comprehensive understanding of these principles, and take the first step toward conducting research that makes a meaningful impact in your field.

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# **EXHIBIT 8**

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Case title: Margarita Perez v. Diamond Wipes International Inc., et al.  
Case no.: CIVSB2220822 and CIVSB2225774  
Court: San Bernardino  
Judge: Hon. Joseph T. Ortiz  
Page subject: **Data**

**Important Dates**

|                                                               |                               |
|---------------------------------------------------------------|-------------------------------|
| Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins: | Wednesday, September 19, 2018 |
| Lab.Code § 203 (waiting time penalties) period begins:        | Thursday, September 19, 2019  |
| Lab.Code § 2699 (civil penalties) period begins:              | Tuesday, September 7, 2021    |
| Lab.Code § 226 (pay stub penalties) period begins:            | Sunday, September 19, 2021    |
| LWDA Notice:                                                  | Wednesday, September 7, 2022  |
| Lawsuit:                                                      | Monday, September 19, 2022    |
| Sample begin:                                                 | Thursday, July 25, 2019       |
| Sample end:                                                   | Sunday, December 15, 2024     |
| Sample calendar days:                                         | 1,970                         |
| Mediation:                                                    | Wednesday, March 19, 2025     |
| Anticipated Settlement Period end date:                       | Thursday, July 17, 2025       |
| Settlement Period to Sample Period:                           | 126.55%                       |

**Classes / Groups sizes**

|                      |          |
|----------------------|----------|
| UCL Class Members:   | 335      |
| UCL Workweeks:       | 48,777   |
| UCL Wage Statements: | 25,868   |
| UCL Workdays:        | 385,427  |
| UCL Calendar days:   | 2,373    |
| UCL Months:          | 11226.01 |

|                                       |     |
|---------------------------------------|-----|
| Waiting Time Penalties Class Members: | 156 |
|---------------------------------------|-----|

|                           |        |
|---------------------------|--------|
| PAGA Aggrieved Employees: | 244    |
| PAGA Wage Statements:     | 13,756 |

|                                       |        |
|---------------------------------------|--------|
| Wage Statement Class Members:         | 244    |
| Wage Statement Class Wage Statements: | 13,709 |

**Averages**

|                                |    |              |
|--------------------------------|----|--------------|
| Average Hourly Rate:           | \$ | 21.06        |
| Average Overtime Rate:         | \$ | 31.59        |
| Average Doubletime Rate:       | \$ | 42.12        |
| Average Work Hours Per Day:    |    | 8.25         |
| Average Work Hours Per Week:   |    | 38.20        |
| Average Workdays Per Week:     |    | 4.63         |
| Workdays to Calendar Days (%): |    | 66.14%       |
| Paycycle:                      |    | semi-monthly |
| Paychecks Per Year:            |    | 52           |

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Case title: Margarita Perez v. Workforce Personnel, Inc.  
Case no.: CIVSB2220822 and CIVSB2225774  
Court: San Bernardino  
Judge: Hon. Joseph T. Ortiz  
Page subject: **Unpaid off-the-clock wages**  
Authority: Lab.Code §§ 1194, 1194.2, and 1198

|                            |    |               |
|----------------------------|----|---------------|
| Average Hourly Rate:       | \$ | 21.06         |
| Average Overtime Rate:     | \$ | 31.59         |
| Unpaid hours per work day: |    | 0.75          |
| Actionable workdays:       |    | 385,427       |
| Interest:                  |    | 10%           |
| Unpaid off-the-clock wages | \$ | 10,044,902.12 |

\*Confidential Settlement Communication\*

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Case title: Margarita Perez v. Workforce Personnel, Inc.  
Case no.: CIVSB2220822 and CIVSB2225774  
Court: San Bernardino  
Judge: Hon. Joseph T. Ortiz  
Page subject: **Unprovided Meal Periods**  
Authority: Lab.Code §§ 226.7, 512, and 1198

|                                           |    |               |
|-------------------------------------------|----|---------------|
| Average Overtime Rate:                    | \$ | 31.59         |
| Actionable workdays:                      |    | 385,427       |
| >>Percentage qualifying for meal periods: |    | 98.08%        |
| Violation rate (%)                        |    | 100.00%       |
| <hr/>                                     |    |               |
| Meal period premium wages:                | \$ | 11,941,866.66 |

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Case title: Margarita Perez v. Workforce Personnel, Inc.  
Case no.: CIVSB2220822 and CIVSB2225774  
Court: San Bernardino  
Judge: Hon. Joseph T. Ortiz  
Page subject: **Unprovided Rest Periods**  
Authority: Lab.Code §§ 226.7 and 1198

|                                           |    |               |
|-------------------------------------------|----|---------------|
| Average Overtime Rate:                    | \$ | 31.59         |
| Actionable workdays:                      |    | 385,427       |
| >>Percentage qualifying for rest periods: |    | 99.20%        |
| Violation rate (%)                        |    | 100.00%       |
| <hr/>                                     |    |               |
| Rest period premium wages:                | \$ | 12,175,638.93 |

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Case title: Margarita Perez v. Workforce Personnel, Inc.  
Case no.: CIVSB2220822 and CIVSB2225774  
Court: San Bernardino  
Judge: Hon. Joseph T. Ortiz  
Page subject: **Unreimbursed expenses**  
Authority: Lab.Code § 2802

|                                                             |    |           |
|-------------------------------------------------------------|----|-----------|
| Cost of tools/protective gear such as goggles per employee: | \$ | 50.00     |
| UCL Class Members:                                          |    | 335       |
| Interest rate:                                              |    | 10%       |
| Unreimbursed expenses:                                      | \$ | 18,425.00 |

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Case title: Margarita Perez v. Workforce Personnel, Inc.  
Case no.: CIVSB2220822 and CIVSB2225774  
Court: San Bernardino  
Judge: Hon. Joseph T. Ortiz  
Page subject: **Itemized Wage Statements**  
Authority: Lab.Code § 226

|                                       |    |              |
|---------------------------------------|----|--------------|
| Wage Statement Class Members:         |    | 244          |
| Wage Statement Class Wage Statements: |    | 13,709       |
| Initial penalty:                      | \$ | 50.00        |
| Subsequent penalty:                   | \$ | 100.00       |
| Statutory wage statement penalties:   | \$ | 1,358,700.00 |

\*Confidential Settlement Communication\*

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Case title: Margarita Perez v. Workforce Personnel, Inc.  
Case no.: CIVSB2220822 and CIVSB2225774  
Court: San Bernardino  
Judge: Hon. Joseph T. Ortiz  
Page subject: **Waiting Time / Final Wages**  
Authority: Lab.Code § 203

|                                       |    |            |
|---------------------------------------|----|------------|
| Waiting Time Penalties Class Members: |    | 156        |
| Days waiting:                         |    | 30         |
| Average Hourly Rate:                  | \$ | 21.06      |
| Average Overtime Rate:                | \$ | 31.59      |
| Average Doubletime Rate:              | \$ | 42.12      |
| Average Work Hours Per Day:           |    | 8.25       |
| Regular Hours Per Day:                |    | 8.00       |
| Overtime Hours Per Day:               |    | 0.25       |
| Doubletime Hours Per Day:             |    | -          |
| Waiting time penalties:               | \$ | 825,446.70 |



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Case title: Margarita Perez v. Workforce Personnel, Inc.  
Case no.: CIVSB2220822 and CIVSB2225774  
Court: San Bernardino  
Judge: Hon. Joseph T. Ortiz  
Page subject: **PAGA Civil Penalties**  
Authority: Lab.Code §§ 2698, *et seq.*

| Labor Code violation                                 | Labor Code Civil<br>Penalty Statute | Initial<br>penalty | Pay periods |           | Total               |
|------------------------------------------------------|-------------------------------------|--------------------|-------------|-----------|---------------------|
| Minimum wages (Lab.Code § 1197):                     | Lab.Code § 1197                     | \$ 100.00          | 13,756      | \$        | 1,375,600.00        |
| Overtime wages/M meal Periods (Lab.Code §§ 510/512): | Lab.Code § 558                      | \$ 50.00           | 13,756      | \$        | 687,800.00          |
| Rest periods (Lab.Code § 1198):                      | Lab.Code § 2699                     | \$ 100.00          | 13,756      | \$        | 1,375,600.00        |
| Business expenses (Lab.Code § 2802):                 | Lab.Code § 2699                     | \$ 100.00          | 13,756      | \$        | 1,375,600.00        |
| Improper pay stubs (Lab.Code § 226):                 | Lab.Code § 2699                     | \$ 100.00          | 13,756      | \$        | 1,375,600.00        |
| Untimely wages (Lab.Code §§ 201-204):                | Lab.Code § 2699                     | \$ 100.00          | 13,756      | \$        | 1,375,600.00        |
| <b>Total:</b>                                        |                                     |                    |             | <b>\$</b> | <b>7,565,800.00</b> |

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Margarita Perez v. Workforce Personnel, Inc.  
Case no.: CIVSB2220822 and CIVSB2225774  
Court: San Bernardino  
Judge: Hon. Joseph T. Ortiz  
Page subject: **Totals**  
Authority: Various

| Restitution                                                          |                         | Reduction | Settlement Value    |
|----------------------------------------------------------------------|-------------------------|-----------|---------------------|
| Unpaid off-the-clock wages                                           | \$ 10,044,902.12        | 90% \$    | 1,004,490.21        |
| Meal period premium wages:                                           | \$ 11,941,866.66        | 90% \$    | 1,194,186.67        |
| Rest period premium wages:                                           | \$ 12,175,638.93        | 90% \$    | 1,217,563.89        |
| Unreimbursed expenses:                                               | \$ 18,425.00            | 90% \$    | 1,842.50            |
| Restitution subtotal:                                                | \$ 34,180,832.71        | \$        | 3,418,083.27        |
| <b>Penalties</b>                                                     |                         |           |                     |
| Statutory wage statement penalties:                                  | \$ 1,358,700.00         | 90% \$    | 135,870.00          |
| Waiting time penalties:                                              | \$ 825,446.70           | 90% \$    | 82,544.67           |
| Minimum wages (Lab.Code § 1197):civil penalties:                     | \$ 1,375,600.00         | 90% \$    | 137,560.00          |
| Overtime wages/M meal Periods (Lab.Code §§ 510/512):civil penalties: | \$ 687,800.00           | 100%      |                     |
| Rest periods (Lab.Code § 1198):civil penalties:                      | \$ 1,375,600.00         | 100%      |                     |
| Business expenses (Lab.Code § 2802):civil penalties:                 | \$ 1,375,600.00         | 100%      |                     |
| Improper pay stubs (Lab.Code § 226):civil penalties:                 | \$ 1,375,600.00         | 100%      |                     |
| Untimely wages (Lab.Code §§ 201-204):civil penalties:                | \$ 1,375,600.00         | 100%      |                     |
| Penalties subtotal:                                                  | \$ 9,749,946.70         | \$        | 355,974.67          |
| <b>Grand total:</b>                                                  | <b>\$ 43,930,779.41</b> | <b>\$</b> | <b>3,774,057.94</b> |

# **EXHIBIT 9**

1 DAVID G. SPIVAK, State Bar # 179684  
2 THE SPIVAK LAW FIRM  
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CONFORMED COPY  
OF ORIGINAL FILED  
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  
27  
THE  
SPIVAK  
LAW FIRM

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

4 **INTRODUCTION**

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

12 **PARTIES AND CONDUCT**

13 **A. Plaintiffs and Class Members**

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

### 8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

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

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

1           23.     California Labor Code § 510(a) also requires employers to compensate  
2 employees at two times their regular rates of pay for:

3                   A.     All hours worked in excess of twelve hours in one day; and,

4                   B.     All hours worked in excess of eight hours on a seventh consecutive  
5 workday during a workweek.

6           24.     During the applicable limitations period, Plaintiffs have worked more than eight  
7 hours in one workday, more than forty hours in one workweek, and eight or more hours on a  
8 seventh consecutive workday without being paid for all of those hours at the rates required  
9 under California Labor Code § 510(a).

10          25.     Plaintiffs are informed and believe and thereon allege that Defendants have  
11 maintained a policy or practice of not compensating him and the other members of the **Wages**  
12 **Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege  
13 that Defendants have maintained a policy or practice of not compensating the other members of  
14 the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code §  
15 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of  
16 forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked  
17 hours in excess of eight hours on a seventh consecutive workday.

18          26.     As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the  
19 other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive  
20 relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable  
21 attorney's fees pursuant to California Labor Code § 1194(a).

22                                   **SECOND CLAIM FOR RELIEF**

23                                   **FAILURE TO PROVIDE REST AND MEAL PERIODS**

24                                   **(By Plaintiffs, the Rest Period Class, and the Meal Period Class)**

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

27          28.     At all relevant times, Plaintiffs and other members of the **Rest Period Class** and  
**Meal Period Class** have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10                               **THIRD CLAIM FOR RELIEF**

11                               **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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



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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

## 6 **EIGHTH CLAIM FOR RELIEF**

### 7 **UNFAIR COMPETITION**

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

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully  
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes  
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*  
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair  
14 competition and allows a person who has suffered an injury-in-fact and has lost money or  
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on  
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the  
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and  
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost  
20 money or property as a result of not being paid for hours worked, not being paid at legal  
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest  
22 and meal periods not provided to them, being provided with inaccurate written wage statements  
23 that have had the effect of concealing other wage underpayments, Defendants' improper  
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'  
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have  
27 been subject to the same unlawful policies or practices of Defendants, including not being paid  
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided  
2 with inaccurate written wage statements that have had the effect of concealing other wage  
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for  
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon  
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California  
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other  
8 comparable companies doing business in the State of California that comply with their legal  
9 obligations to compensate employees for all earned wages and to provide them with reasonable  
10 means of verifying that they have been paid all earned wages with accurate written wage  
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on  
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and  
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did  
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to  
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant  
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the  
19 common fund doctrine.

## 20 **NINTH CLAIM FOR RELIEF**

### 21 **CIVIL PENALTIES**

#### 22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully  
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§  
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on  
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other  
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'  
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,  
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,  
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay  
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee  
9 per pay period for each subsequent violation (penalty amounts established by California Labor  
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars  
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars  
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount  
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional  
15 violation (penalty amounts established by California Labor Code § 210);

16 C. For violations of California Labor Code § 226(a), two hundred fifty  
17 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per  
18 employee for each subsequent violation (penalty amounts established by California Labor Code  
19 § 226.3); and,

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars  
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the  
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one  
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the  
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty  
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in  
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs  
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to  
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs  
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend  
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of  
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in  
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly  
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to  
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24  
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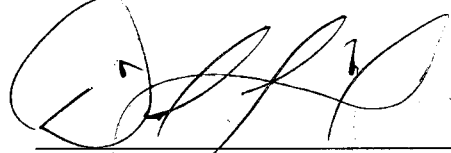
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- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

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 10**

1 CASE NUMBER: BC430633  
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS  
3 RJ FINANCIAL, ET AL.,  
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012  
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE  
6 APPEARANCES: (SEE TITLE PAGE.)  
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659  
8 TIME: A.M. SESSION  
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
11 OPEN COURT:)

12  
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING  
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS  
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE  
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN  
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.  
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.  
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE  
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW  
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND  
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO  
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I  
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION  
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL  
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,  
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE  
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND  
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT  
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT  
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE  
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE  
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL  
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT  
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,  
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT  
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,  
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS  
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA  
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS  
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.  
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES  
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR  
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,  
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1     VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2     W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL  
3     K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --  
4     CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT  
5     THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,  
6     GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A  
7     WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO  
8     THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY  
9     WAS, AS I SAY, DECIDED IN 1991.

10                 IN 2010, EFFECTIVE JANUARY 1, 2010, THE  
11     CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG  
12     OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE  
13     3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION  
14     AND STATEMENT DECISION AND JUDGMENT.

15                 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590  
16     WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY  
17     BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO  
18     THE (C) SUBSECTION.

19                 IT READS NOW, (READING:)

20                 THE COURT IN ITS TENTATIVE DECISION MAY:  
21     STATE THAT IT IS THE COURT'S PROPOSED  
22     STATEMENT OF DECISION, SUBJECT TO A PARTY'S  
23     OBJECTION UNDER SUBSECTION (G);

24                 (2) INDICATE THAT THE COURT WILL PREPARE  
25     A STATEMENT OF DECISION;

26                 (3) ORDER A PARTY TO PREPARE A STATEMENT  
27     OF DECISION; OR

28                 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,  
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE  
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES  
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO  
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF  
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN  
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE  
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE  
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED  
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION  
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR  
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT  
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES  
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS  
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT  
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW  
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY  
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT  
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT  
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE  
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A  
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),  
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF  
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT  
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION  
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE  
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL  
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A  
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE  
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S  
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER  
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR  
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE  
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I  
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE  
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN  
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S  
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A  
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL  
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS  
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS  
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA  
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED  
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE  
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT  
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS  
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR  
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST  
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH  
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE  
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE  
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED  
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST  
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A  
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE  
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE  
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR  
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST  
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED  
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE  
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY  
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;  
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR  
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED  
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF  
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER  
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE  
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE  
8 ASSESSED AND COLLECTED BY THE LABOR AND  
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS  
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,  
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS  
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED  
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED  
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND  
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO  
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS  
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION  
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED  
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY  
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE  
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO  
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME  
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS  
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT  
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED  
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A



1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11  
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE  
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN  
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING  
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS  
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT  
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE  
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE  
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL  
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL  
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --  
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S  
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE  
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ  
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY  
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA  
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA  
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE  
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT  
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --  
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS  
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.  
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT  
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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28

1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)  
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN  
3 AGAINST RJ CASE.

4 OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED  
5 ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA  
6 ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO  
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE  
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,  
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH  
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S  
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK  
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS  
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH  
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS  
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE  
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --  
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S  
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN  
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.  
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY  
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS  
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR  
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT  
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT  
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER  
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES  
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS  
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED  
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE  
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR  
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE  
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND  
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY  
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY  
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,  
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND  
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS  
16 WITNESSES ARGUED AND WRANGLED WITH THE QUESTIONERS DURING  
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME  
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN  
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).  
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER  
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT  
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE  
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS  
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION  
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S  
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)  
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS  
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT  
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,  
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND  
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE  
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412  
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS  
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE  
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE  
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.  
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A  
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,  
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES  
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY  
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD  
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH  
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL  
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON  
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE  
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION  
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE  
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN  
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER  
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE  
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN  
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE  
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE  
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND  
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF  
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM  
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE  
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED  
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE  
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER  
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558  
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS  
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE  
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE  
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE  
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU  
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S  
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S  
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE  
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO  
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING  
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY  
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE  
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS  
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY  
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN  
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A  
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES  
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE  
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,  
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I  
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT  
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN  
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,  
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D  
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD  
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR  
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH  
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE  
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH  
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX  
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS  
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH  
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,  
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT  
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME  
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;  
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,  
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY  
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS  
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM  
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE  
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS  
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS  
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE  
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT  
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE  
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS  
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST  
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY  
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES  
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS  
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT  
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN  
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK  
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE  
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS  
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT



1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE  
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE  
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS  
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515  
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL  
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT  
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER  
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE  
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO  
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE  
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO  
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER  
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED  
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF  
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO  
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE  
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR  
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --  
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN  
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT  
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL  
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA  
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE  
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE  
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE  
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY  
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR  
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT  
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE  
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT  
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF  
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG  
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE  
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO  
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS  
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S  
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY  
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS  
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT  
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR  
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR  
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE  
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT  
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED  
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --  
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION  
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW  
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR  
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR  
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION  
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART  
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE  
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED  
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE  
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,  
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST  
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS  
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25  
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS  
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE  
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE  
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,  
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND  
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR  
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL  
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT  
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE  
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512  
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE  
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE  
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT  
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE  
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS  
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE  
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512  
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S  
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S  
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198  
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH  
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218  
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS  
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,  
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF  
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR  
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST  
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE  
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT  
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF  
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED  
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT  
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR  
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS  
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY  
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF  
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM  
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND  
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION  
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE  
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER  
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER  
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD  
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE  
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT  
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF  
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY  
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I  
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A  
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.  
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A  
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE  
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH  
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS  
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN  
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS  
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S  
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS  
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS  
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY  
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A  
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS  
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON  
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN  
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED  
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL  
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT  
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I  
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH  
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE  
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I  
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT  
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I  
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN  
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I  
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.  
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED  
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE  
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE  
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE  
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE  
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE  
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE  
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL  
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS  
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR  
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE  
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,  
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET  
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE  
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED  
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED  
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE  
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND  
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,  
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --  
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY  
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF  
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS  
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO  
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE  
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE  
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT  
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS  
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE  
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY  
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD  
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60  
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS  
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A  
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,  
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD  
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE  
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER  
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT  
22 ACTUALLY 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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# **EXHIBIT 11**



## CONSULTA DE ABOGADOS Y CONTRATO DE HONORARIOS PARA CASOS DE CONTINGENCIA

ESTE CONTRATO DE HONORARIOS PARA CASOS DE CONTINGENCIA (“Contrato”) se celebra el 23 de abril 2025, entre Maria De la Luz Huerta, en lo sucesivo denominado “Cliente”, por un lado, y The Spivak Law Firm de Los Angeles, CA y Benowitz Law Corporation de West Hollywood, CA, por otro lado, en lo sucesivo denominados colectivamente como “Abogados”:

En consideración de las promesas mutuas aquí contenidas, las partes acuerdan lo siguiente:

### I. PROPÓSITO DE LA REPRESENTACIÓN

1.01 Por la presente, el Cliente contrata y emplea Abogados para demandar y recuperar todos los recursos monetarios y equitativos a los que el Cliente pueda tener derecho, así como para comprometer y resolver todas las reclamaciones que se describen a continuación:

**Demanda colectiva y Ley General de Abogados Privados (“PAGA”) por salarios no pagados, reducción de tiempo y salario, falta de proporcionar descansos para almorzar y descanso, y reclamaciones relacionadas contra Workforce Personnel Incorporated, Inc., Diamond Wipes International, Inc. y entidades relacionadas.**

1.02 Este acuerdo no será vinculante para ninguna de las partes, y los Abogados no comenzarán a brindar servicios legales hasta que el Cliente haya firmado este Acuerdo.

1.03 Los abogados brindarán los servicios legales razonablemente necesarios y tomarán las medidas necesarias para mantener informado al Cliente sobre el progreso del caso. Los abogados responderán dentro de un tiempo y forma razonables a las consultas del Cliente. Si se hace necesario un proceso judicial, los Abogados representarán al Cliente durante el juicio y mociones posteriores al fallo. Se deben hacer arreglos separados para cualquier procedimiento de apelación o ejecución que el cliente desee llevar a cabo después del fallo, o cualquier otro asunto para el cual el Cliente desee contratar Abogados que no sean los descritos anteriormente.

## II. HONORARIOS Y GASTOS DE ABOGADOS

2.01 En consideración de los servicios prestados y que serán prestados por los Abogados, el Cliente acuerda pagar a los Abogados las siguientes cantidades sobre cualquier acuerdo, dinero, juicio u otra consideración que se haya pagado o se pueda pagar en este asunto legal:

2.01.1 Antes de la presentación de una demanda o iniciar un proceso de arbitraje: 33 y 1/3 por ciento de cualquier recuperación.

2.01.2 Después de la presentación de una demanda o iniciar un proceso de arbitraje: 40 por ciento de cualquier recuperación. En caso de que el Cliente prevalezca en el juicio (o arbitraje) de este asunto, cualquier adjudicación de honorarios por el tribunal, de conformidad con la ley o el contrato, en relación con el tema de esta representación, se pagará a los Abogados y se aplicará a los honorarios del Cliente en virtud de este Acuerdo, pero no limitará ni exonerará la obligación de honorarios del Cliente. En el caso de que el tribunal adjudique honorarios al Cliente que prevalezca en el juicio, los Abogados recibirán la adjudicación de honorarios o 40% de la adjudicación total, lo que sea mayor.

2.02 Se acuerda y se entiende que si el monto de los honorarios de abogados en este reclamo o causa de la demanda está regulado o regido por la ley, y esa ley excluye cualquier otro acuerdo de honorarios que no sea el monto establecido por la ley o el reglamento, entonces el monto pagadero en virtud del presente contrato a dichos Abogados se limitará al máximo permitido por la ley. En el caso de un acuerdo o sentencia de demanda colectiva, un acuerdo o sentencia PAGA, u otro acuerdo o resolución representativa, es necesaria la aprobación de un tribunal para la adjudicación de honorarios de abogados. Normalmente, con dichos acuerdos y sentencias, una solicitud de honorarios de abogados será por no más de un tercio (33 y 1/3%) del valor total del monto del acuerdo o sentencia. Los abogados solicitarán una adjudicación de honorarios de abogados del tribunal que puede ser mayor o menor que los porcentajes indicados anteriormente. Bajo tales circunstancias. Los abogados también le pedirán al tribunal que les adjudique al Cliente's por separado los gastos que han adelantado por este asunto. Antes de tales solicitudes a un Tribunal de honorarios y costos de abogados, los Abogados buscarán el consentimiento por escrito del Cliente para los honorarios y costos de abogados solicitados.

2.02.1 Si los honorarios legales totales recibidos en este caso son \$250,000.00 o más, se acuerda que Benowitz Law Corporation recibirá el 33 y 1/3%

del total de los honorarios legales recibidos y The Spivak Law Firm recibirá el 66 y 2/3% restante del total de los honorarios legales recibidos. Si los honorarios legales totales recibidos en este caso son menos de \$250,000.00, se acuerda que Benowitz Law Corporation recibirá el 25% del total de los honorarios legales recibidos y The Spivak Law Firm recibirá el 75% restante del total de los honorarios legales recibidos.

2.03 Esta sección se refiere a la posibilidad de liquidación de las reclamaciones individuales, honorarios de abogados y costos en caso de que las reclamaciones representativas ya no sean viables. Bajo este Acuerdo, los Abogados acuerdan representar al Cliente para proseguir con las reclamaciones descritas en la Sección 1.01 de este Acuerdo, indicados anteriormente. Estas reclamaciones son reclamaciones representativas porque el Cliente acepta que el Cliente's prosiga con las Reclamaciones del Cliente por sí mismo y todos los empleados e individuos comparables. En este sentido, los Abogados informan al Cliente de la siguiente información material:

2.03.1 Los abogados han elegido representar al Cliente principalmente porque el Cliente tiene reclamaciones que el Cliente puede presentar en nombre de muchos otros empleados comparables. Como resultado, las reclamaciones del Cliente tienen el potencial de respaldar una demanda colectiva y/o una demanda PAGA.

2.03.2 Las reclamaciones individuales del Cliente, y las de cada uno de los otros empleados comparables en nombre de los cuales los Abogados presentarán la demanda, generalmente tienen un valor muy pequeño en salarios no pagados, gastos de trabajo no reembolsados, intereses y/o sanciones monetarias legales. Los abogados no habrían aceptado representar al Cliente si no fuera por la gran probabilidad de que un Tribunal permita que la demanda del Cliente proceda a juicio en nombre de muchos otros empleados con reclamaciones comparables a las reclamaciones del Cliente.

2.03.3 Solo mediante la combinación de las reclamaciones de numerosas personas pueden los Abogados razonablemente esperar recuperar los honorarios y costos de los Abogados en los que incurren como parte de la representación de contingencia del Cliente por parte de los Abogados.

2.03.4 Por razones que se desconocen en el momento de este Acuerdo y por razones que están fuera del control de los Abogados y el Cliente, los Abogados pueden descubrir después de que el Cliente ejecute este Acuerdo que no existen numerosos empleados comparables con reclamaciones comparables a las reclamaciones del Cliente. En este caso, es posible que los Abogados y el Cliente ya no puedan continuar con la demanda colectiva o las reclamaciones de PAGA.

2.03.5 Con base en la experiencia previa de los Abogados, los Demandados (la parte o partes que el Cliente demanda o tiene la intención de demandar) en demandas colectivas y acciones PAGA a menudo intentan llegar a una resolución con el Demandante (la parte que demanda o tiene la intención de demandar) por el valor máximo de las reclamaciones individuales del Demandante. Tales resoluciones impiden que el Demandante continúe representando a personas comparables (a veces conocidas como "miembros de la demanda colectiva", "miembros putativos de la demanda colectiva", "miembros propuestos de la demanda colectiva" y/o "empleados agraviados") en nombre de quienes el Cliente presentó la demanda.

2.03.6 Con base en la experiencia previa de los Abogados, el Demandado puede ofrecer resolver las reclamaciones individuales del Cliente por una cantidad de dinero que iguale o exceda el valor máximo de las reclamaciones del Cliente. En este caso, los honorarios y costos de los Abogados probablemente excederán el valor máximo de las reclamaciones individuales del Cliente. A menudo, según la experiencia de los Abogados, los honorarios y costos de los Abogados excederán con mucho el valor de las reclamaciones individuales del Cliente.

2.03.7 Los Abogados pueden aconsejar al Cliente que acepte un acuerdo de liquidación individual de las reclamaciones del Cliente si no existen numerosas personas con reclamaciones comparables a las del Cliente y un acuerdo de liquidación individual es lo mejor para el Cliente. Alternativamente, el Cliente puede optar por llegar a un acuerdo de liquidación por un monto que iguale o supere el valor máximo de las reclamaciones individuales del Cliente, incluso si hay numerosas personas con reclamaciones que son comparables a las reclamaciones del Cliente.

2.03.8 Con base en la evidencia que los Abogados pueden obtener después de llegar a este Acuerdo con el Cliente, la estimación de los Abogados del valor máximo de las reclamaciones del Cliente puede cambiar en el transcurso de la relación Abogado-Cliente en virtud de este Acuerdo.

2.03.9 En caso de que el Demandado ofrezca llegar a una resolución con el Cliente por una cantidad de dinero que iguale o supere el valor máximo de las reclamaciones individuales del Cliente, el Cliente acepta que, si los honorarios y costos de los Abogados exceden el valor máximo de las reclamaciones del Cliente, los Abogados pueden elegir, únicamente al elección del Cliente, que el Cliente reciba sólo el valor máximo de las reclamaciones individuales del Cliente de los fondos del acuerdo de liquidación y que los Abogados reciban los fondos del acuerdo de liquidación

restantes para cubrir la totalidad o parte de los honorarios y costos de los Abogados y los riesgos que surgen de la representación de contingencia del Cliente por parte de los Abogados. En otras palabras, el Cliente se compromete a aceptar como el acuerdo de liquidación la cantidad igual al valor máximo estimado de las reclamaciones del Cliente. Los Abogados revelan que los honorarios de Abogados y los costos incurridos pueden exceder sustancialmente la recuperación neta del Cliente.

2.03.10 Dentro de los siete días de la solicitud por escrito del Cliente a los Abogados, ellos le proporcionarán al Cliente su estimación del valor máximo de las reclamaciones del Cliente. Esta estimación del valor máximo puede cambiar en el transcurso del litigio.

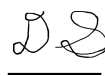
2.03.11 Los abogados recomiendan encarecidamente que el Cliente consulte con un abogado independiente sobre esta disposición, incluyendo si esta disposición es lo mejor para el Cliente. Al escribir sus iniciales a continuación, el Cliente acepta que los Abogados le han brindado al Cliente una oportunidad razonable para consultar con un abogado independiente sobre esta disposición y el Cliente da su consentimiento a esta disposición.

\_\_\_\_ (Iniciales del Cliente)

2.04 Las tarifas establecidas anteriormente no están establecidas por ley, pero son negociables entre un abogado y un cliente.

2.05 El Cliente acepta otorgar a los Abogados un derecho de retención sobre todas y cada una de las reclamaciones o causas de la demanda que sean objeto de este Acuerdo. El derecho de retención, para asegurar el pago de cualquier suma adeudada a los Abogados al finalizar los servicios prestados, se adjuntará a cualquier recuperación que el Cliente pueda obtener. Los Abogados pueden exigir el pago de honorarios y costos de tales fondos recuperados en nombre del Cliente, incluso si los Abogados han sido despedidos antes de que finalice el caso. El Cliente puede buscar la opinión de un abogado independiente de la elección del Cliente's antes de aceptar este derecho de retención. Al escribir sus iniciales a continuación, el Cliente acepta que el Cliente ha tenido la oportunidad razonable para consultar a un bufete de abogados independiente, independientemente de si el Cliente ha consultado realmente a dicho bufete de abogados, y el Cliente acepta que los abogados tendrán un derecho de retención como se especifica anteriormente.

\_\_\_\_ (Iniciales del Cliente aquí)

 (Iniciales de David Spivak aquí)

### III. APROBACIÓN NECESARIA PARA EL ACUERDO DE LIQUIDACIÓN

3.01 Por la presente, los Abogados están autorizados a participar en todas y cada una de las negociaciones del acuerdo de liquidación en nombre de aquellos a quienes los Abogados representan, según lo consideren apropiado. Esto incluye, pero no se limita a, la prerrogativa de los Abogados de emprender negociaciones del acuerdo de liquidación de pagos en efectivo o estructurados.

3.02 Por la presente, el Cliente otorga a los Abogados un poder notarial para manejar las negociaciones y discusiones del acuerdo de liquidación con respecto a la obtención de la posesión de todos y cada uno de los dineros u otras cosas de valor objeto del asunto adeudado al Cliente en virtud de esta reclamación en la mayor medida en que el Cliente podría hacerlo en persona.

3.02.1 Esto incluye expresamente el derecho a firmar el nombre del Cliente en cualquier cheque de la compañía de seguros, giros postales, cheques de caja, cheques u otros instrumentos negociables pagaderos a Abogados y Clientes, Abogados o al Cliente sin la unión de Abogados, presentados a Abogados en nombre del Cliente en el acuerdo de liquidación total o parcial de este caso.

3.02.2 Este poder notarial limitado autoriza además a los Abogados a colocar estos dineros, mencionados anteriormente, en la cuenta fiduciaria de The Spivak Law Firm y desde esa cuenta de fideicomiso, realizar distribuciones y pagos a los Abogados por la tarifa acordada indicada anteriormente, reembolso a los Abogados por todos y cada uno de los gastos incurridos por los Abogados en el manejo de este caso, pagos al Cliente de los intereses del Cliente en el dinero recuperado como se indicó anteriormente, y pagos a terceros que no sean el Cliente y los Abogados por los servicios prestados, los honorarios cobrados o las facturas entregadas en relación con la representación del Cliente, incluyendo, entre otros, las facturas médicas, los honorarios de los taquígrafos judiciales, los honorarios de las deposiciones, los servicios de investigación, los costos de las pruebas u otros gastos especiales incurridos por los Abogados en nombre del Cliente.

3.03 No se realizará ningún acuerdo de liquidación de ningún tipo por ninguna de las reclamaciones o ganancias antes mencionados del Cliente sin la aprobación completa del Cliente, ni el Cliente obtendrá ningún acuerdo de liquidación sobre las reclamaciones mencionadas anteriormente sin la aprobación completa del abogado.

3.04 A los abogados se les otorga un poder notarial limitado para que puedan tener plena autoridad para preparar, firmar y presentar todos los instrumentos legales, alegatos, borradores, autorizaciones y documentos que sean razonablemente necesarios para concluir esta representación, incluyendo el acuerdo de liquidación y/o reducir a posesión de cualquier y todo dinero u otras cosas de valor adeudadas al Cliente en virtud de esta reclamación en la medida en que el Cliente pueda hacerlo en persona.

#### IV. REPRESENTACIONES

4.01 Se acuerda y se entiende expresamente que el Abogado no ha hecho promesas ni garantías en cuanto al resultado del caso al Cliente. Los abogados no han manifestado al Cliente que el Cliente recuperará todos o parte de los fondos deseados. El Cliente también reconoce que obtener un fallo no garantiza que la parte contraria pueda cumplir con la resolución del tribunal. Además, se entiende y se acepta expresamente que no se han hecho otras representaciones al Cliente, excepto las establecidas en este Contrato.

#### V. DEDUCCIÓN DE GASTOS

5.01 Todos los gastos razonables incurridos por los Abogados en el manejo de este asunto legal se deducirán de los ingresos netos del acuerdo de liquidación en el momento en que se liquide o resuelva el caso, y antes de que el honorario contingente sea calculado.

5.02 Los gastos contemplados anteriormente incluyen, entre otros, todos y cada uno de los gastos de bolsillo incurridos en relación con este caso, incluyendo, entre otros, los siguientes gastos: honorarios de presentación, costos judiciales, copias certificadas de documentos, alegatos, órdenes etc., transcripciones, declaraciones, costos de duplicación, franqueo, suministros de oficina, fotografías, pruebas de juicio, llamadas telefónicas y de fax de larga distancia, honorarios de tasación, consultores, testigos expertos y otros honorarios asociados con la preparación y el testimonio del juicio, honorarios de investigación, cargos de entrega, servicios de paquetería/correo al día siguiente, gastos de estacionamiento, carretera de peaje y kilometraje, gastos fuera de la ciudad, incluyendo gastos de viaje, pasajes aéreos, hoteles, comidas y cualquier otro gasto incurrido en relación con el asunto.



5.03 Excepto por lo siguiente, todos los gastos y costos serán cargados al Cliente a costo de los Abogados: millaje a \$0.50/milla y fotocopias a \$0.25/página.

## VI. COOPERACIÓN DEL CLIENTE

6.01 El Cliente mantendrá informados a los Abogados sobre el paradero del Cliente en todo momento, y les proporcionará a los Abogados cualquier cambio de dirección, número de teléfono o afiliación empresarial durante el período de tiempo en el que se requieran los servicios de los Abogados, y cumplirá con todas las solicitudes razonables de los Abogados en relación con la preparación y presentación de dicha representación.

6.02 Los Abogados pueden, a elección de los Abogados, retirarse del caso y dejar de representar al Cliente por cualquier motivo, incluyendo, entre otros, el hecho de que el Cliente no pague oportunamente los honorarios y gastos o depósitos correspondientes de conformidad con este Contrato, sujeto a los requisitos de responsabilidad profesional a los que están sujetos los abogados.

6.03 Además, se entiende y se acuerda entre las partes que, al finalizar cualquier servicio de Abogado, cualquiera de los depósitos del Cliente que queden en la Cuenta de Fideicomiso de The Spivak Law Firm se aplicará a cualquier saldo restante adeudado a los Abogados por honorarios y/o gastos y cualquier excedente restante se reembolsará al Cliente.

6.04 Deberes como representante de los grupos demandantes en una demanda colectiva o demanda PAGA. El Cliente ha contratado Abogados para procesar una demanda colectiva y/o demanda PAGA en nombre del Cliente y empleados comparables y otras personas. Esta sección se aplica únicamente a las responsabilidades del Cliente como representante de los grupos demandantes o como abogado general privado. El cliente tendrá ciertos deberes y responsabilidades con respecto a las personas comparables en nombre de las cuales se presenta la demanda. Algunos de estos deberes se explican con mayor detalle a continuación.

6.04.1 Los abogados pueden solicitar al Tribunal una adjudicación especial para compensar al Cliente como representante de los grupos demandantes o abogados generales privados por la contribución del Cliente a la demanda y/o la exoneración del Cliente de todas las reclamaciones individuales que el Cliente pueda tener. Sin embargo, el Cliente entiende que, a menos que el Tribunal apruebe dicha adjudicación, el Cliente

sólo tendrá derecho a la parte prorrateada del Cliente de los fondos disponibles para su distribución a todos los miembros de la demanda colectiva, empleados agraviados e individuos comparables.

6.04.2 Un representante de la demanda colectiva representa los intereses de todos los miembros de su demanda colectiva en litigios para recuperar dinero de salarios no pagados, sanciones, reembolsos, restitución y/u obtener medidas cautelares para la demanda colectiva. Del mismo modo, un abogado general privado representa los intereses de todos los empleados agraviados comparables en litigios para recuperar dinero de sanciones civiles (sanciones monetarias que tradicionalmente sólo el Estado puede demandar) en nombre del Cliente, otros empleados agraviados y del Estado de California.

6.04.3 La demanda colectiva o grupo de empleados agraviados generalmente consiste en todas las personas que están en una situación similar con respecto a un curso de conducta o práctica común. En otras palabras, todas aquellas personas que se ven afectadas por el comportamiento cuestionado.

6.04.4 Un representante de la demanda colectiva o los abogados generales privados tienen reclamaciones que son típicas de las de la demanda colectiva o grupo de empleados agraviados y, por lo tanto, involucran cuestiones comunes de derecho o, de hecho. Por ejemplo, como representante de la demanda colectiva, las reclamaciones del Cliente contra el demandado son típicos de las reclamaciones de la demanda colectiva y del abogado general privado contra el demandado, simplemente porque el Cliente resultó lesionado por las mismas prácticas de empleo ilegales que los otros miembros de la demanda colectiva y los empleados agraviados.

6.04.5 Un representante de la demanda colectiva y un abogado general privado siempre considera los intereses de la demanda colectiva y/o los empleados agraviados de la misma manera que el Cliente consideraría los intereses propios del Cliente y, en algunos casos, debe anteponer los intereses de la clase y otros empleados agraviados a los intereses propios del Cliente. Esto significa que el Cliente es un defensor de las otras personas o un litigante fiduciario.

6.04.6 Un representante de la clase o un fiscal general privado siempre participa activamente en la demanda, según sea necesario, entre otras cosas, respondiendo a los interrogatorios, presentando documentos a los demandados y brindando declaración y testimonio en el juicio si así se solicita. Es posible que se requiera que el Cliente viaje para dar tal testimonio.

6.04.7 Un representante de la demanda colectiva o un abogado general privado reconoce y acepta que cualquier resolución de la demanda por desestimación o acuerdo de liquidación está sujeta a la aprobación del tribunal y debe diseñarse en el mejor interés de la demanda colectiva en su conjunto.

6.04.8 No se requiere que un representante de la demanda colectiva o un abogado general privado sea particularmente sofisticado o tenga conocimientos sobre el tema de la demanda. Sin embargo, un abogado general privado representante de la demanda colectiva debe seguir el progreso de la demanda y debe proporcionar todos los hechos relevantes a los abogados de la demanda colectiva o los empleados agraviados.

6.04.9 Un representante de la demanda colectiva o un abogado general privado se ofrece como voluntario para representar o defender a muchas otras personas con reclamaciones y lesiones similares debido a la importancia del caso y la necesidad de que todos los miembros de la demanda colectiva o los empleados agraviados se beneficien de la demanda por igual; el ahorro de tiempo, dinero y esfuerzo debería beneficiar a todas las partes y al tribunal. Las demandas colectivas y las demandas PAGA son una herramienta importante para garantizar el cumplimiento de la ley, incluyendo cuando las pérdidas de una persona pueden ser relativamente pequeñas.

Al escribir sus iniciales a continuación, el Cliente ha revisado y reconoce los deberes del Cliente como representante de la demanda colectiva y/o del abogado general privado.

\_\_\_\_ (Iniciales del Cliente aquí)

## VIII. SE APLICA LA LEY DE CALIFORNIA

7.01 Este Acuerdo se interpretará de conformidad con las leyes de California, y todas las obligaciones de las partes creadas en virtud del presente son ejecutables en el Condado de Los Ángeles, CA.

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## VIII. PARTES VINCULANTES

8.01 Este Acuerdo será vinculante y redundará en beneficio de las partes del este y de sus respectivos herederos, albaceas, administradores, representantes legales, sucesores y cesionarios donde lo permita este Acuerdo.

## IX. INTERPRETACIÓN JURÍDICA

9.01 En caso de que una o más de las disposiciones contenidas en este Acuerdo, por cualquier motivo, se consideran inválidas, ilegales o inaplicables en cualquier aspecto, dicha invalidez, ilegalidad o inaplicabilidad no afectará ninguna otra disposición del mismo y este Acuerdo. se interpretará como si dicha disposición inválida, ilegal o inaplicable nunca hubiera estado contenida en este documento.

## X. ACUERDOS ANTERIORES REEMPLAZADOS

10.01 Este Acuerdo constituye el único y único acuerdo por y entre las partes. Hace nulo y reemplaza cualquier acuerdo previo o acuerdo escrito u oral entre las partes con respecto al tema tratado en este documento.

## XI. RESOLUCIÓN DE CONTROVERSIAS MEDIANTE ARBITRAJE

11.01 El Cliente tiene derecho a elegir el arbitraje de conformidad con los procedimientos de arbitraje de honorarios del Colegio de Abogados del Estado de California, en cualquier disputa sujeta a la jurisdicción del Estado de California sobre los honorarios, cargos, costos o gastos de abogados, según lo establecido en la Sección 6200, et seq. del Código de Negocios y Profesiones de California. Si, después de recibir una notificación de este derecho a arbitraje, el Cliente no elige proceder conforme a los procedimientos de arbitraje de honorarios de la Asociación de Abogados del Estado y no presenta una solicitud de arbitraje de honorarios dentro de los 30 días, cualquier disputa sobre honorarios, cargos, costos o gastos, se resolverá mediante arbitraje vinculante como se describe a continuación.

11.02 Cualquier controversia entre las partes con respecto a la interpretación, aplicación o ejecución de cualquier servicio en virtud de este Acuerdo, y cualquier reclamación que surja o esté relacionada con este Acuerdo o su incumplimiento, se

someterá a arbitraje vinculante a solicitud por escrito de una de las partes después de la notificación de esa solicitud a la otra parte. El único y exclusivo lugar para el arbitraje y/o cualquier disputa legal será el Condado de Los Ángeles, California.

11.03 Al escribir sus iniciales a continuación, el Cliente y los Abogados confirman que han leído y entendido los párrafos anteriores y aceptan voluntariamente el arbitraje vinculante. Al hacerlo, el Cliente y los Abogados renuncian voluntariamente a importantes derechos constitucionales de un juicio ante un juez o ante un jurado, así como a los derechos de apelación. Se informa al cliente que cliente tiene derecho a tener un bufete de abogados independiente de la elección del Cliente para que revise estas disposiciones de arbitraje, y todo este acuerdo, antes de escribir sus iniciales en esta disposición o firmar este Acuerdo.

\_\_\_\_\_

(Iniciales del Cliente aquí)

DS

(Iniciales de David Spivak aquí)

#### **DIVULGACIÓN Y RECONOCIMIENTO DE IMPUESTOS:**

**SE RECOMIENDA AL CLIENTE QUE OBTENGA ASESORAMIENTO DE IMPUESTOS INDEPENDIENTE Y COMPETENTE CON RESPECTO A ESTOS ASUNTOS LEGALES YA QUE LAS TRANSACCIONES LEGALES PUEDEN DAR LUGAR A CONSECUENCIAS DE IMPUESTOS.**

**LOS BUFETES DE ABOGADOS Y LOS ABOGADOS QUE ABAJO FIRMAN NO HAN ACORDADO EN PRESTAR NINGÚN ASESORAMIENTO DE IMPUESTOS Y NO SON RESPONSABLES DE NINGÚN ASESORAMIENTO RELACIONADO CON ASUNTOS DE IMPUESTOS O LA PREPARACIÓN DE DECLARACIONES DE IMPUESTOS U OTROS DECLARACIONES, INCLUYENDO, ENTRE OTROS, DECLARACIONES DE IMPUESTOS ESTATALES Y FEDERALES SOBRE INGRESOS Y HERENCIAS.**

**ADEMÁS, EL CLIENTE DEBE OBTENER AYUDA PROFESIONAL CON RESPECTO A LA VALORACIÓN Y UBICACIÓN DE TODOS LOS ACTIVOS QUE PUEDAN SER OBJETO DE UN ASUNTO LEGAL, INCLUYENDO, ENTRE OTROS, PENSIONES, BENEFICIOS LABORALES Y LOS DERECHOS DE PARTICIPACIÓN EN LAS GANANCIAS QUE PUEDAN SER**

## **CONTROLADOS POR CUALQUIER OTRA PARTE DEL ASUNTO LEGAL.**

### **XII. EXCLUSIÓN DE GARANTÍAS**

12.01 Nada en este Acuerdo y nada en las declaraciones de los Abogados al Cliente se interpretará como una promesa o garantía sobre el resultado del asunto. Los abogados no hacen tales promesas o garantías. No puede haber ninguna garantía de que el Cliente recuperará cualquier suma o sumas de dinero en este asunto. Los comentarios de los abogados sobre el resultado de este asunto son únicamente expresiones de opinión. El Cliente reconoce que los Abogados no han hecho promesas ni garantías sobre el resultado.

### **XIII. DESPIDO Y RENUNCIA**

13.01 El Cliente puede despedir a los Abogados en cualquier momento, con notificación por escrito. Los Abogados pueden renunciar con el consentimiento del Cliente, o por una buena causa, que incluye el incumplimiento de este Acuerdo por parte del Cliente, la negativa a cooperar o comunicarse con los Abogados sobre este asunto, o cualquier hecho o circunstancia que haga que la representación de los Abogados sea ilegal o poco ética. Los Abogados, a solicitud del Cliente, entregarán el archivo y la propiedad del Cliente en su posesión, a menos que estén sujetos a un gravamen según lo dispuesto anteriormente, ya sea que el Cliente haya completado o no el pago de todos los servicios prestados.

### **XIV. FECHA DE ENTRADA EN VIGOR**

14.01 Este Acuerdo regirá todos los servicios legales a partir de la fecha en que los Abogados comenzaron a realizar trabajos para el Cliente. La fecha de este documento debe utilizarse únicamente como referencia. El Cliente deberá pagar a los Abogados el valor razonable de los servicios prestados por los Abogados, incluso si este acuerdo nunca entra en vigor.

Además, certifico y reconozco que he leído este Contrato y que voluntariamente he celebrado este Contrato con pleno conocimiento de sus términos y condiciones a partir de la fecha en que los Abogados prestaron sus servicios por primera vez. Todos

los clientes que firman a continuación aceptan ser responsables, conjunta y solidariamente, de todas las obligaciones en virtud de este acuerdo.

Firmado el: 04 / 23 / 2025



Maria De la Luz Huerta

THE SPIVAK LAW FIRM

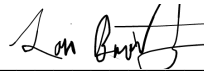
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## **DECLARACIÓN DE LOS DERECHOS DEL CLIENTE POR CONCEPTO DE HONORARIOS DE CONTINGENCIA**

Antes de que usted, el posible cliente, establezca un acuerdo de honorarios contingentes con un abogado, debe entender y comprender esta declaración de sus derechos como cliente. Esta declaración no es parte del contrato real entre usted y su abogado, pero, como posible cliente, debe conocer estos derechos.

1. No existe ningún requisito legal de que un abogado le cobre a un cliente un honorario fijo o un porcentaje del dinero recuperado en un caso. Usted, el Cliente, tiene derecho a hablar con su abogado sobre los honorarios propuestos y negociar el honorario o el porcentaje como en cualquier otro contrato. Si no llega a un acuerdo con un (1) abogado, puede hablar con otros abogados.

2. Cualquier contrato de honorarios contingentes debe ser por escrito y usted tiene tres (3) días hábiles para reconsiderar el contrato. Usted puede cancelar el contrato sin ningún motivo si notifica a su abogado por escrito dentro de los 3 días hábiles siguientes de haber firmado el contrato. Si se retracta del contrato dentro de los primeros tres (3) días hábiles, usted no le debe honorarios al abogado, aunque puede ser responsable de los costos reales del abogado durante ese tiempo. Si su abogado comienza a representarlo, su abogado no puede retractarse del caso sin darle aviso, sin entregarle los documentos necesarios y darle tiempo para contratar a otro abogado. A menudo, su abogado debe obtener la aprobación del tribunal antes de retractarse de un caso. Si despide a su abogado sin una buena causa después del período de 3 días, usted debe pagar honorarios por el trabajo que el abogado haya realizado.

3. Antes de contratar a un abogado, usted, el Cliente, tiene derecho a conocer la educación, formación y experiencia del abogado. Si le pregunta, el abogado debe informarle específicamente sobre la experiencia real del abogado en el manejo de casos similares al suyo. Si usted lo solicita, el abogado debe brindarle información sobre formación o conocimientos especiales y darle esta información por escrito si usted así lo solicita.

4. Antes de firmar un contrato de honorarios contingentes con usted, un abogado debe informarle si el abogado tiene la intención de manejar su caso solo o si otros abogados lo ayudarán con el caso. Si su abogado tiene la intención de remitir el caso a otros abogados, el abogado debe decirle qué tipo de arreglo de reparto de honorarios se hará con los otros abogados. Si lo representarán abogados de diferentes



bufetes de abogados, al menos un (1) abogado de cada bufete de abogados deberá firmar el contrato de honorarios contingentes.

5. Si su abogado tiene la intención de remitir su caso a otro abogado o asesorarse con otros abogados, su abogado debe informarle sobre eso desde el principio. Si su abogado toma el caso y luego decide remitirlo a otro abogado o asociarse con otros abogados, debe firmar un nuevo contrato que incluya a los nuevos abogados. Usted, el Cliente, también tiene derecho a consultar con cada abogado que trabaje en su caso y cada abogado es legalmente responsable de representar sus intereses y es legalmente responsable de los actos de los otros abogados involucrados en el caso.

6. Usted, el Cliente, tiene derecho a saber de antemano cómo deberá pagar los gastos y los honorarios legales al final del caso. Si paga un depósito por adelantado para los costos, puede hacer preguntas razonables sobre cómo se ha gastado o se gastará el dinero y cuánto queda sin gastar. Su abogado debe darle una estimación razonable sobre los costos futuros necesarios. Si su abogado acepta prestarle o adelantarle dinero para preparar o investigar el caso, tiene derecho a saber periódicamente cuánto dinero ha gastado su abogado en su nombre. También tiene derecho a decidir, después de consultar con su abogado, cuánto dinero se gastará para preparar un caso. Si usted paga los gastos, usted tiene derecho a decidir cuánto gastar. Su abogado también debe informarle si el honorario se basará en el monto neto recuperado o en el monto recuperado menos los costos.

7. Usted, el Cliente, tiene derecho a que su abogado le informe sobre las posibles consecuencias adversas si pierde el caso. Esas consecuencias adversas pueden incluir el dinero que podría tener que pagar a su abogado por los costos y la responsabilidad que podría tener por los honorarios, costos y gastos de los abogados de la otra parte.

8. Usted, el Cliente, tiene derecho a recibir y aprobar una declaración final al finalizar el caso antes de pagar cualquier dinero. La declaración debe indicar todos los detalles financieros de todo el caso, incluyendo la cantidad recuperada, todos los gastos y una declaración precisa de los honorarios de su abogado. Hasta que apruebe la declaración final, su abogado no puede pagar dinero a nadie, ni siquiera a usted, sin una orden apropiada del tribunal. Usted también tiene derecho a que todos los abogados o bufetes de abogados de su caso firmen esta declaración final.

9. Usted, el Cliente, tiene derecho a preguntarle a su abogado a intervalos razonables cómo está progresando el caso y a que el abogado le responda estas preguntas en lo mejor de su capacidad.

10. Usted, el Cliente, tiene derecho a tomar la decisión final con respecto al acuerdo de liquidación de un caso. Su abogado debe notificarle todos los ofrecimientos del acuerdo de liquidación antes y después del juicio. Los ofrecimientos durante el juicio deben comunicarse de inmediato y debe consultar con su abogado si acepta un acuerdo de liquidación. Sin embargo, usted debe tomar la decisión final de aceptar o rechazar un acuerdo de liquidación.

11. Si en algún momento usted, el Cliente, cree que su abogado ha cobrado un honorario excesivo o ilegal, usted tiene el derecho a informar el asunto a la Asociación de Abogados de California, la agencia que supervisa la práctica y el comportamiento de todos los abogados en California. Para obtener información sobre cómo comunicarse con la Asociación de Abogados de California, comuníquese con la asociación de abogados local. Cualquier desacuerdo entre usted y su abogado sobre los honorarios puede llevarse a los tribunales y es posible que desee contratar a otro abogado para que lo ayude a resolver este desacuerdo. Por lo general, las disputas de honorarios deben manejarse en una demanda por separado, a menos que su contrato de honorarios prevea el arbitraje.

Firmado el: 04 / 23 / 2025



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Firmado el: 04 / 23 / 2025



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# **EXHIBIT 12**

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](#).<sup>1</sup>

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

#### **FACTS<sup>2</sup>**

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.<sup>3</sup>

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.<sup>4</sup> 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.”<sup>5</sup> 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.<sup>6</sup>

### 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

<sup>1</sup> Labor Code section 218.5 will be referred to in this opinion as § 218.5.

<sup>2</sup> 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).

<sup>3</sup> Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount plaintiffs are entitled to

*reasonable fees* for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- \* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

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# **EXHIBIT 13**

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.<sup>1</sup>

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.<sup>2</sup>

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](#).<sup>3</sup> [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.<sup>4</sup>

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.<sup>5</sup>

### **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

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- <sup>4</sup> 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).' "
- <sup>5</sup> 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 14**

2003 WL 352422  
Not Officially Published  
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)  
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,

v.

SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, [S. Charles Wickersham, J.](#), granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, [Haller, J.](#), held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, [S. Charles Wickersham](#), Judge. Affirmed in part and reversed in part.

### Opinion

[HALLER, J.](#)

**\*1** Cecilia Csaszi sued her former employer, Sharp Healthcare<sup>1</sup> (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.

<sup>[1]</sup> 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 <sup>[2]</sup> 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.)

<sup>[3]</sup> 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.)<sup>2</sup>

<sup>[4]</sup> 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."

<sup>151</sup> 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.)<sup>3</sup>

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.<sup>4</sup>

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...."

<sup>[6]</sup> 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

<sup>[7]</sup> 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."<sup>5</sup>

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

<sup>1</sup> 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.

<sup>2</sup> 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.)

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> All further statutory references are to the Labor Code.

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# **EXHIBIT 15**

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](#).”<sup>1</sup> [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](#).<sup>2</sup> 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.”).<sup>3</sup> 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.<sup>4</sup>

\*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.<sup>5</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- <sup>3</sup> *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.
- <sup>4</sup> 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).
- <sup>5</sup> Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

# **EXHIBIT 16**

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?

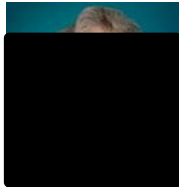
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by 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 17**

April 29, 2014

HUFF  
POST BUSINESS

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## What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

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In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning - make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

Follow Janice Harper on Twitter: [www.twitter.com/Janice\\_Harper](http://www.twitter.com/Janice_Harper)

6 people are discussing this article with 11 comments

## Comments are closed on this entry.

Highlighted Most Recent Oldest Most Faved My Conversations

Pippen

287 Fans

2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.  
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

FAVE SHARE MORE

DHC

SUPER USER · 56 Fans

1

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

FAVE SHARE MORE

kjk326

2 Fans

Excellent article, right on topic. I went through this nightmare & found just how chilling & hostile a formerly friendly environment can become overnight. People who were your close friends hesitate to talk to you and avoid being seen with you. Your every move is put under the microscope and twisted into some type of bad behavior while the person who committed the illegal act is lauded and promoted and you are made to feel like a social outcast at best and I say this even though in the end I prevailed. You are left so emotionally drained, sadly it seems to be the American way; forget ethics, it's the dollar that prevails. Most of all I don't know how HR people sleep at night when they defend someone they know clearly committed an illegal act,

10 JAN 2012 8:34 PM

FAVE SHARE MORE

ARTICLE AUTHOR

Janice Harper

HUFFPOST BLOGGER · 218 Fans

Thank you for sharing your experience. I think it's significant that you say in the end you prevailed -- sadly, that is the sixth myth -- that it will all be worth it. It rarely is. The toll on the worker who pursues an employment claim is enormous, and few attorneys, no matter how skilled, adequately prepare plaintiffs for what's up ahead. I'm so sorry you had to go through it.

Yet we have made great advances in working conditions in the U.S. in part due to lawsuits, and there are cases where workers are left with no recourse but to turn to the courts. In those cases, the more a person knows what to expect and how to be prepared, the better the emotional outcome. Thank you again for sharing your story.

10 JAN 2012 8:55 PM

FAVE SHARE MORE

3 PEOPLE IN THE CONVERSATION

Read Conversation →

noahmarder

512 Fans · Exposing the regressive lies, one by one

There is no justice in this country. What else is new? Risk/reward probably favors stealing from your employer rather than suing them. At least with theft, your career is ruined only if you get caught. You also have a better chance of stealing significant money than of winning anything but an airtight case. I don't see a moral problem either, so long as what is stolen doesn't exceed the damage done by the employer, plus the effort required for the theft, plus the chance of being caught multiplied by the penalty



for being caught. It is the employer, after all, who has taken away any legal remedies through the retaliation mechanisms described in the article.

10 JAN 2012 9:09 PM

FAVE SHARE MORE

Pippen

287 Fans

If you think all of that is bad apply it to Texas where employment is an "at will" state. Another way of putting this would be outright slavery and the slave master can fabricate reality on how they feel that morning and your life is forever changed.

America sets itself apart from 3rd world countries with the argument that we have a

- 1 Superior Justice System
- 2 Freedom of religion
- 3 Separation of Church and State
- 4 Opportunity to pursue your capitalist dreams of career and family
- 5 That taxes pay for your well being (roads, FDA, national safety etc..)
- 6 National security (threat of invasion and subjugation by an enemy rule...)
- 7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

FAVE SHARE MORE

# **EXHIBIT 18**

Quotation Request:  
Lizette Cortez  
Spivak Law  
lizzett@spivaklaw.com

Case Name:                      Diamoond  
Date:                              Thursday, October 9, 2025  
RFP Number:                      20119007

Prepared By:  
Michael Sutherland  
Apex Class Action LLC  
mike@apexclassaction.com  
321.223.5067

| Settlement Specifications                        |     |
|--------------------------------------------------|-----|
| Estimated Class Size:                            | 354 |
| Certified Language Translation: Spanish Mandarin | Yes |
| Static Settlement Website:                       | Yes |
| Percentage of Undeliverable Mail:                | 20% |

| Professional Services | Fee Calculation | Rate(s) | Quantity | Estimated Cost |
|-----------------------|-----------------|---------|----------|----------------|
|-----------------------|-----------------|---------|----------|----------------|

| Data Analytics and Standardization                                                                                 |          |          |            |          |
|--------------------------------------------------------------------------------------------------------------------|----------|----------|------------|----------|
| Import and Standardize Data*                                                                                       | Per Hour | \$125.00 | 1          | \$125.00 |
| Data Analyst                                                                                                       | Per Hour | \$150.00 | 1          | \$150.00 |
| *Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr. |          |          |            |          |
|                                                                                                                    |          |          | Sub Total: | \$275.00 |

| Mailing of Class Notice                                    |             |            |            |            |
|------------------------------------------------------------|-------------|------------|------------|------------|
| Form Set Up                                                | Per Hour    | \$120.00   | 1          | WAIVED     |
| Print & Mail Class Notice                                  | Per Piece   | \$1.25     | 354        | \$442.50   |
| USPS First Class Postage                                   | Per Piece   | \$0.78     | 354        | \$276.12   |
| Remail Undeliverable Mail (Skip-Trace)                     | Per Piece   | \$2.00     | 35         | \$70.80    |
| Receive and Process Undeliverable Mail                     | Per Hour    | \$75.00    | 1          | \$37.50    |
| Process Class Member Correspondence via mail, e-mail & fax | Per Piece   | \$75.00    | 1          | \$37.50    |
| NCOA Address Update (USPS)                                 | Static Rate | \$25.00    | 1          | \$25.00    |
| Certified Language Translation: Spanish                    | Static Rate | \$1,000.00 | 2          | \$2,000.00 |
|                                                            |             |            |            |            |
|                                                            |             |            | Sub Total: | \$2,889.42 |

| Project Management         |          |          |            |          |
|----------------------------|----------|----------|------------|----------|
| Project Management         | Per Hour | \$150.00 | 2          | \$300.00 |
| Project Coordinator        | Per Hour | \$90.00  | 2          | \$180.00 |
| Data Analyst and Reporting | Per Hour | \$140.00 | 2          | \$280.00 |
|                            |          |          |            |          |
|                            |          |          | Sub Total: | \$760.00 |

| Professional Services | Fee Calculation | Rate(s) | Quantity | Estimated Cost |
|-----------------------|-----------------|---------|----------|----------------|
|-----------------------|-----------------|---------|----------|----------------|

| Toll-Free Contact Center, Website & Reporting |             |          |            |          |
|-----------------------------------------------|-------------|----------|------------|----------|
| Bilingual Toll-Free Contact Center            | Static Rate | \$250.00 | 1          | \$250.00 |
| Settlement Website: Static Apex URL           | Static Rate | \$350.00 | 1          | \$350.00 |
| Settlement Status Reports                     | Static Rate | \$750.00 | 1          | Waived   |
|                                               |             |          |            |          |
|                                               |             |          | Sub Total: | \$600.00 |

| Distribution & Settlement Fund Management                   |             |            |            |            |
|-------------------------------------------------------------|-------------|------------|------------|------------|
| Settlement Calculations (Preliminary and Final)             | Per Hour    | \$120.00   | 3          | \$360.00   |
| Account Management and Reconciliation                       | Per Hour    | \$140.00   | 3          | \$420.00   |
| Print & Mail Distribution Settlement Check (W-2/1099)       | Per Piece   | \$1.00     | 354        | \$354.00   |
| USPS First Class Postage                                    | Per Piece   | \$0.78     | 354        | \$276.12   |
| Remail Distribution to Updated Address (Skip Trace)         | Per Piece   | \$1.50     | 35         | \$53.10    |
| Reminder Notice via Post Card                               | Static Rate | \$195.00   | 1          | \$195.00   |
| Individual Income Tax Preparation & Reporting               | Per Hour    | \$100.00   | 7          | \$700.00   |
| QSF Income Tax Reporting (per calendar year)                | Per Year    | \$1,000.00 | 1          | \$1,000.00 |
| Unclaimed Funds: State Controller's Unclaimed Property Fund | Static Rate | \$150.00   | 1          | \$150.00   |
|                                                             |             |            |            |            |
|                                                             |             |            | Sub Total: | \$3,508.22 |
|                                                             |             |            |            |            |

| Post Distribution Reconciliation  |          |          |            |          |
|-----------------------------------|----------|----------|------------|----------|
| Bank Account Reconciliation       | Per Hour | \$125.00 | 2          | \$250.00 |
| Project Management Reconciliation | Per Hour | \$100.00 | 2          | \$200.00 |
| Declarations                      | Per Hour | \$120.00 | 2          | \$240.00 |
|                                   |          |          |            |          |
|                                   |          |          | Sub Total: | \$690.00 |

|                                      |  |  |  |            |
|--------------------------------------|--|--|--|------------|
| TOTAL ESTIMATED ADMINISTRATION COST: |  |  |  | \$8,722.64 |
| TOTAL CAPPED ADMINISTRATION COST:    |  |  |  | \$8,490.00 |

## Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. Services: Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. Payment Terms: As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. Incurred Expenses: In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. Invoicing: Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. Case Duration: The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. Termination of Services: Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (I) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. Independent Contractor: As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.

9. Limitation of Liability: The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. Indemnification: The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. Confidentiality: Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.

14. COMPLETE AGREEMENT. These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. Force Majeure: In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.

18. Severability: This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. Nonwaiver: This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

# **EXHIBIT 19**



**October 10, 2025**

#### CASE ASSUMPTIONS

|                       |                   |
|-----------------------|-------------------|
| Class Members         | 354               |
| Opt Out Rate          | 1%                |
| Opt Outs Received     | 7                 |
| Total Class Claimants | 347               |
| Subtotal Admin Only   | <b>\$9,954.59</b> |

**Flat Fee Total \$9,500.00**  
**For 354 Class Members**

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

#### Case: Diamond Case, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore  
 Contact Number: 949.331.0131  
 Email: mike@phoenixclassaction.com

Requesting Attorney: Lizzett Cortez  
 Firm: The Spivak Law Firm  
 Contact Number: (818) 582-3197  
 Email: lizzett@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.  
 Estimate is based on **354** 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 days.

| 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   | 61          | \$122.00           |
| NCOA (USPS)                                                         | \$70.00  | 1           | \$70.00            |
| <b>Total</b>                                                        |          |             | <b>\$692.00</b>    |

\* Up to 120 days after disbursement

| Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website |          |             |                    |
|----------------------------------------------------------------------------------------------|----------|-------------|--------------------|
| Project Action                                                                               | Rate     | Hours/Units | Line Item Estimate |
| Notice Packet Formatting                                                                     | \$100.00 | 3           | \$300.00           |
| Language Translation                                                                         | \$900.00 | 2           | \$1,800.00         |
| Data Merge & Duplication Scrub                                                               | \$0.10   | 354         | \$35.40            |
| Notice Packet & Opt-Out Form                                                                 | \$1.50   | 354         | \$531.00           |
| Estimated Postage (up to 2 oz.)*                                                             | \$1.15   | 354         | \$407.10           |
| Static Website                                                                               | \$200.00 | 1           | \$200.00           |
| Check Cashing Reminder Postcard                                                              | \$0.60   | 121         | \$72.60            |
| Postage Included                                                                             |          |             |                    |
| <b>Total</b>                                                                                 |          |             | <b>\$3,346.10</b>  |

\* 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                                                                  | \$70.00 | 1           | \$70.00            |
| Skip Tracing Undeliverables                                                     | \$1.00  | 53          | \$53.10            |
| Remail Notice Packets                                                           | \$1.00  | 50          | \$50.10            |
| Estimated Postage                                                               | \$0.90  | 50          | \$45.09            |
| Programming Undeliverables                                                      | \$50.00 | 2           | \$100.00           |
| Total                                                                           |         |             | \$318.29           |

| Database Programming / Processing Opt-Outs, Deficiencies or Disputes |          |             |                    |
|----------------------------------------------------------------------|----------|-------------|--------------------|
| Project Action:                                                      | Rate     | Hours/Units | Line Item Estimate |
| Programming Database                                                 | \$150.00 | 1           | \$150.00           |
| Non Opt-Out Processing                                               | \$200.00 | 1           | \$200.00           |
| Case Associate                                                       | \$55.00  | 5           | \$275.00           |
| Deficiency & Dispute Letters                                         | \$10.00  | 1           | \$10.00            |
| Case Manager                                                         | \$85.00  | 3           | \$255.00           |
| Total                                                                |          |             | \$890.00           |

| Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks |          |             |                    |
|--------------------------------------------------------------------------|----------|-------------|--------------------|
| Project Action:                                                          | Rate     | Hours/Units | Line Item Estimate |
| Programming Calculations                                                 | \$135.00 | 1           | \$135.00           |
| Disbursement Review                                                      | \$135.00 | 1           | \$135.00           |
| Programming Manager                                                      | \$95.00  | 2           | \$190.00           |
| QSF Bank Account & EIN                                                   | \$135.00 | 1           | \$135.00           |
| Check Run Setup & Printing                                               | \$135.00 | 5           | \$675.00           |
| Mail Class Checks *                                                      | \$0.90   | 347         | \$312.30           |
| Estimated Postage                                                        | \$0.70   | 347         | \$242.90           |
| Total                                                                    |          |             | \$1,825.20         |

\* 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                                                                                         | \$80.00    | 1           |           | \$80.00    |
| Remail Checks<br>(Postage Included)                                                                     | \$2.00     | 84          |           | \$168.00   |
| 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 *<br>(1 State Tax Reporting & Escheating to<br>the State of CA Included) | \$1,300.00 | 1           |           | \$1,300.00 |
| Total                                                                                                   |            |             |           | \$2,883.00 |

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

**Estimate Total: \$9,954.59**



## **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 20**



Reference No. 20251006-PJI-06

October 13, 2025

Lizzett Cortez  
The Spivak Law Firm  
1875 Century Park East Fl 7  
Los Angeles CA 90067

**RE:     *Diamond – Class and PAGA***

Dear Lizzett,

Thank you for this opportunity to provide an updated quote for your above-captioned settlement. Using the parameters you described, Simpluris' total estimated cost is \$18,479. As a courtesy, we are offering a \$1,000 discount, for a discounted total of \$17,479.

Please let me know if you have questions. I look forward to this opportunity to work together.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Patrick J. Ivie".

**PATRICK J. IVIE**  
Chief Revenue Officer

m: 310-995-6455  
o: 714-975-5260  
e: [pivie@simpluris.com](mailto:pivie@simpluris.com)



3194-C Airport Loop Drive, Costa Mesa, CA 92626  
[www.simpluris.com](http://www.simpluris.com) | 1 (800) 779 - 2104



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

|                           |                 |                            |                                                              |
|---------------------------|-----------------|----------------------------|--------------------------------------------------------------|
| Estimate Number:          | 20251006-PJI-06 | Prepared By:               | Patrick J. Ivie                                              |
| Estimate Date:            | 10/13/2025      | Telephone Number (mobile): | 310.995.6455                                                 |
| Estimate Expiration Date: | 1/11/2026       | Email:                     | <a href="mailto:pjvie@simpluris.com">pjvie@simpluris.com</a> |

Primary Contact  
Attorney: **Lizzett Cortez**  
Firm: The Spivak Law Firm  
Email: [lizzett@spivaklaw.com](mailto:lizzett@spivaklaw.com)

Opposing Counsel Contact  
Attorney:  
Firm:  
Email:

**Case Name: Diamond  
Class and PAGA Settlement**

## Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

|                               |                |                               |           |
|-------------------------------|----------------|-------------------------------|-----------|
| Anticipated Class Size:       | 354            | Undeliverable Rate:           | 10%       |
| Claims Rate:                  | N/A            | Mail Skip Trace Success Rate: | 85%       |
| Opt-out Rate:                 | 1%             | Call Rate:                    | 4%        |
| Language(s) for Communication | EN/SP/Mandarin | Average Call Length:          | 4 Minutes |
| Reminder Mailing:             | Postcard       | Fund Distribution:            | Simpluris |
| Unclaimed Funds:              | Escheat        | Number of Distributions:      | 1         |
| State(s):                     | CA             | Tax Year(s):                  | 1         |
| Length of Administration:     | 9 Months       |                               |           |

## Case Setup

- Undertake postings on Simpluris website of key documents as ordered by the Court (e.g. orders and the Settlement Agreement)
- Data compilation: develop case-specific response tracking

| Category                                 | Unit Value | # of Units | Total    |
|------------------------------------------|------------|------------|----------|
| Project Manager - Case Setup             | \$110.00   | 2          | \$220.00 |
| Case Document Web Postings               | \$225.00   | 1          | \$225.00 |
| Database Manager - Initial Data Analysis | \$125.00   | 2          | \$250.00 |
| Total:                                   |            |            | \$695.00 |

## Notice and Communications

- Spanish Translation of the Notice
- Mandarin Translation of the Notice
- 15-page Notice Packet: Opt-Out Form, Dispute Form & Objection Form, sent by First Class US Mail, in English, Spanish and Mandarin
- Single Postcard Reminder Mailing

| Category                                        | Unit Value | # of Units | Total      |
|-------------------------------------------------|------------|------------|------------|
| Spanish Translations - assuming 7,500 words     | \$0.25     | 7,500      | \$1,875.00 |
| Mandarin Translations - assuming 7,500 words    | \$0.35     | 7,500      | \$2,625.00 |
| Trilingual Notice Packet - assuming 45 images   | \$6.024    | 354        | \$2,132.50 |
| Postage                                         | \$5.02     | 354        | \$1,777.08 |
| NCOA/CASS/LACS                                  | \$0.14     | 354        | \$49.56    |
| Undeliverable Processing and Skip Trace         | \$0.32     | 36         | \$11.52    |
| Remail Notice (assuming 85% skip trace success) | \$7.02     | 31         | \$214.93   |
| Remail Postage                                  | \$0.72     | 31         | \$22.03    |
| Single Postcard Reminder Mailing                | \$0.18     | 354        | \$63.72    |
| Postage                                         | \$0.59     | 354        | \$208.86   |
| Mailing Supervisor                              | \$55.00    | 2          | \$110.00   |
| Total:                                          |            |            | \$9,090.20 |

## Contact Center

- Establish case-specific toll-free number and 24/7 IVR
- Assuming 4-minute calls

| Category                                | Unit Value | # of Units | Total      |
|-----------------------------------------|------------|------------|------------|
| Call Center Set Up                      | \$350.00   | 1          | \$350.00   |
| Toll Free Monthly Maintenance           | \$95.00    | 9 Months   | \$855.00   |
| IVR (includes toll-free number charges) | \$15.00    | 1          | \$15.00    |
| Subtotal                                |            |            | \$1,220.00 |

## Administration

- Process incoming class and counsel communications, opt-outs, disputes, and objections

| Category                     | Unit Value | # of Units | Total           |
|------------------------------|------------|------------|-----------------|
| Database Manager             | \$125.00   | 2          | \$250.00        |
| Project Manager              | \$110.00   | 2          | \$220.00        |
| Dispute Processing           | \$1.75     | 18         | \$30.98         |
| Opt-out Processing           | \$1.75     | 4          | \$7.00          |
| Reporting to Counsel (hours) | \$100.00   | 4          | \$400.00        |
| <b>Total:</b>                |            |            | <b>\$907.98</b> |

## Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Uncashed checks to escheat to State of California in the name of the aggrieved employee
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

| Category                                     | Unit Value | # of Units | Total             |
|----------------------------------------------|------------|------------|-------------------|
| Disbursement Data Preparation                | \$125.00   | 2          | \$250.00          |
| Disbursement Manager - Data Validation       | \$90.00    | 2          | \$180.00          |
| Setup Banking Account/QSF                    | \$675.00   | 1          | \$675.00          |
| QSF Monthly Reconciliation and Maintenance   | \$125.00   | 9          | \$1,125.00        |
| Print & Mail Distribution Check and Tax Docs | \$0.60     | 354        | \$212.40          |
| Postage                                      | \$5.02     | 354        | \$1,777.08        |
| Process Returned Checks (assuming 5%)        | \$0.20     | 18         | \$3.60            |
| Skip Trace Search Undeliverable Checks       | \$0.12     | 18         | \$2.16            |
| Remail Checks (includes postage)             | \$1.70     | 18         | \$30.60           |
| Escheat Uncashed Checks                      | \$500.00   | 1          | \$500.00          |
| QSF Reporting and Final Declaration          | \$500.00   | 1          | \$500.00          |
| QSF Annual Tax Reporting and Reconciliation  | \$850.00   | 1          | \$850.00          |
| Distribution Manager                         | \$90.00    | 2          | \$180.00          |
| <b>Total:</b>                                |            |            | <b>\$6,285.84</b> |

## Case Completion

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

| Category                             | Unit Value | # of Units | Total           |
|--------------------------------------|------------|------------|-----------------|
| Data Manager-Final Reporting         | \$125.00   | 1          | \$125.00        |
| Clerical-Clean Up Any Misc.          | \$45.00    | 1          | \$45.00         |
| Project Manager-Wrap-up Final Issues | \$110.00   | 1          | \$110.00        |
| <b>Total:</b>                        |            |            | <b>\$280.00</b> |

|                                                |                 |
|------------------------------------------------|-----------------|
| <b>Total Estimated Cost of Administration:</b> | <b>\$18,479</b> |
| <b>Less Client Courtesy Discount:</b>          | <b>-\$1,000</b> |
| <b>Discounted Total:</b>                       | <b>\$17,479</b> |

# Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

**1. Services:** Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

**2. Fee Estimates Not Binding:** Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

**3. Billing and Payment:** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

**4. Further Assurances:** Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

**5. Rights of Ownership:** The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

**6. Bank Accounts:** Simpluris will establish a demand deposit checking account for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit of such settlement funds with such institutions. Such amounts may be retained by Simpluris as a financial benefit and to offset administration costs including FDIC deposit insurance recordkeeping. In addition, Simpluris may also be required to establish a Qualified Settlement Fund ("QSF") to hold the settlement funds. Simpluris may derive financial benefits from the QSF in the form of interest payments derived therefrom. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

**7. Retention of Documents & Data:** Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

**8. Limitation of Liability; Disclaimer of Warranties:** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

**9. Force Majeure:** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

**10. Rights in Data:** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

**11. Electronic Communications:** During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

**12. Notice:** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

**13. Waiver:** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

**14. Termination:** Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

**15. Jurisdiction:** These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

**16. Survival:** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 8 - Limitation of Liability; Disclaimer of Warranties, Section 10 – Rights in Data, and Section 15- Jurisdiction, 17 -Confidentiality, and Section 18 – Indemnification.

**17. Confidentiality:** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

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

**19. Severability:** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**20. Database Administration:** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

**21. Entire Agreement:** These Terms and Conditions 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 21**