

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

22 *Defendant(s).*

Case No. CIVSB2220822

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

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

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Attorneys for Defendant(s),
WORKFORCE PERSONNEL, INC.

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Maria De La Luna Huerta (“Plaintiff”) and defendant Workforce Personnel, Inc.
3 (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or
4 individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Workforce Personnel, Inc. captioned “MARGARITA PEREZ and MARIA DE LA LUNA
8 HUERTA on behalf of themselves and all others similarly situated, and the general public, and
9 as “Aggrieved Employees” on behalf of other “Aggrieved Employees” and the State of California
10 under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. WORKFORCE
11 PERSONNEL, INC., California Corporation; DIAMOND WIPES INTERNATIONAL, INC.,
12 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.

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

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

18 1.4. “Aggrieved Employee” means an individual Defendant Workforce Personnel, Inc.
19 employed at Diamond Wipes International, Inc.’s Chino location as an hourly, non-exempt
20 employee during the PAGA Period.

21 1.5. “Class” means all individuals Defendant Workforce Personnel, Inc. employed at
22 Diamond Wipes International, Inc.’s Chino location as an hourly, non-exempt employee during
the Class Period.

23 1.6. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm and Louis
24 M. Benowitz of Benowitz Law Corporation.

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

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 September 19, 2018 to the date of preliminary approval of this Settlement.

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 Workforce Personnel, Inc.

1.17. “Defense Counsel” means Gordon C. Strange of Law Offices of Gordon C. Strange.

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 if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

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

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

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

1.22. “Gross Settlement Amount” means \$340,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses. Defendant will pay its employer-side payroll taxes in addition to the Gross Settlement Amount.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Work Weeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Work Weeks worked during the PAGA Period.

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

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

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

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel 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 1.30. "Notice Packet" means the Class Notice (Exhibit A), the Election Not to
2 Participate in Settlement form (Exhibit B), the Work Week Dispute form (Exhibit C), and the
3 Objection form (Exhibit D) in English with Spanish translations.

4 1.31. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
5 worked for Defendant for at least one day during the PAGA Period.

6 1.32. "PAGA Period" means the period from September 7, 2021 to the date of
7 preliminary approval of this Settlement.

8 1.33. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

9 1.34. "PAGA Notice" means Margarita Perez's September 7, 2022 and Plaintiff
10 Huerta's June 22, 2025 letters to Defendant and the LWDA providing notice pursuant to Labor
11 Code section 2699.3, subd.(a), collectively.

12 1.35. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from
13 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,250.00) and the
14 75% to LWDA (\$3,750.00) in settlement of PAGA claims.

15 1.36. "Participating Class Member" means a Class Member who does not submit a valid
16 and timely Request for Exclusion from the Settlement.

17 1.37. "Plaintiff" means Maria De La Luna Huerta, a named plaintiff in the Action.

18 1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
19 of the Settlement.

20 1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary
21 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
22 attached as Exhibit E.

23 1.40. "Released Class Claims" means the claims being released as described in
24 Paragraph 6.2 below.

25 1.41. "Released PAGA Claims" means the claims being released as described in
26 Paragraph 6.3 below.

27 1.42. "Released Parties" means: Defendant and each of its officers, directors, employees
28 and agents. "Released Parties" does not include Diamond Wipes International Inc. or any of its
officers, directors, employees or agents.

1.43. "Request for Exclusion" means a Class Member's submission of a written request
to be excluded from the Class Settlement signed by the Class Member. An Election Not to

1 Participate in Settlement form is attached as Exhibit B.

2 1.44. "Response Deadline" means 60 days after the Administrator mails Notice to Class
3 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)
4 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
5 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
6 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
the Response Deadline has expired.

7 1.45. "Settlement" means the disposition of the Action effected by this Agreement and
8 the Judgment.

9 1.46. "Work Week" means any week during which a Class Member worked for
10 Defendant for at least one day, during the Class Period.

11 1.47. A Work Week Dispute form is attached as Exhibit C.

12 **2. RECITALS.**

13 2.1. On September 19, 2022, this Action was commenced by filing a Complaint
14 alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful
15 wage deductions, failure to provide meal periods, failure to authorize and permit rest periods,
16 failure to issue proper wage statements, failure to indemnify for business expenses, failure to
17 timely pay wages, and related claims. On November 14, 2025, a First Amended Complaint was
18 filed adding Huerta as named plaintiff. The First Amended Complaint is the operative complaint in
19 the Action (the "Operative Complaint"). Defendant denies the allegations in the Operative
Complaint, denies any failure to comply with the laws identified in in the Operative Complaint
and denies any and all liability for the causes of action alleged.

20 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
21 notice to Defendant and the LWDA by sending the PAGA Notice.

22 2.3. On March 19, 2025, the Parties participated in an all-day mediation presided over
23 by Steve Mehta, esq. which led to this Agreement to settle the Action.

24 2.4. Prior to mediation, the parties obtained, through informal discovery, the number
25 of workweeks, the number of comparable employees, the number of pay periods, average rates
26 of pay, sample time records, sample payroll records, written policies, and related information.
27 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.4th 1794, 1801 and *Kullar v. Foot Locker Retail,*

1 *Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2 2.5. The Court has not granted class certification.

3 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
4 of any other pending matter or action asserting claims that will be extinguished or affected by the
5 Settlement.

6 **3. MONETARY TERMS.**

7 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
8 Defendant promises to pay \$340,000.00 and no more as the Gross Settlement Amount and to
9 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
10 Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll
11 taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will
12 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
13 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
14 Gross Settlement Amount will revert to Defendant.

15 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
16 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
17 the Court in the Final Approval:

18 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
19 Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any
20 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
21 Member). Defendant will not oppose Plaintiff’s request for a Class Representative Service
22 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
23 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
24 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
25 If the Court approves a Class Representative Service Payment less than the amount requested, the
26 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
27 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
28 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 \$113,333.33 and a Class

1 Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendant will not oppose
2 requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class
3 Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses
4 Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a
5 Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the
6 amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount.
7 Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising
8 from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation
9 Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class
10 Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full
11 responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class
12 Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant,
13 from any dispute or controversy regarding any division or sharing of any of these Payments.

14 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
15 \$12,000.00 except for a showing of good cause and as approved by the Court. To the extent the
16 Administration Expenses are less or the Court approves payment less than \$12,000.00, the
17 Administrator will retain the remainder in the Net Settlement Amount.

18 3.2.4. To Each Participating Class Member: An Individual Class Payment
19 calculated by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
20 by all Participating Class Members during the Class Period and (b) multiplying the result by each
21 Participating Class Member's Work Weeks.

22 3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of
23 each Participating Class Member's Individual Class Payment will be allocated to settlement of
24 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
25 reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual
26 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
27 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
28 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
employee taxes owed on their Individual Class Payment.

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

1 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
2 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

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

7 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
8 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,250.00
9 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA
10 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods.
11 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
12 Individual PAGA Payment.

13 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
14 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
15 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

16 **4. SETTLEMENT FUNDING AND PAYMENTS.**

17 4.1. Class Work Weeks and Aggrieved Employee Pay Periods. Based on a review of
18 its records to date, Defendant estimates there are 244 Class Members who collectively worked a
19 total of 19,396 Work Weeks.

20 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
21 of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in
22 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
23 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
24 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
25 employees who need access to the Class Data to effect and perform under this Agreement.
26 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
27 Data omitted class member identifying information and to provide corrected or updated Class
28 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.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator. Defendant will fund the Gross Settlement Amount in 24 installment payments (each referred to as "Installment Payment"). Defendant will deposit the first Installment Payment of \$14,166.66 of the Gross Settlement into an account controlled by the Administrator of the Settlement within 14 days of the Court granting Final Approval. Thereafter, Defendant will make 23 monthly contributions to the account controlled by the Administrator. The next 22 Installment Payments will also be in the amount of \$14,166.66. the last Installment Payment will be in the amount of \$ 14,166.82. Defendant will make each of the next 23 payments every 30 days thereafter. Defendant will also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator for each distribution.

4.4. Payments from the Gross Settlement Amount. The Administrator will make a total of two distributions. The first distribution will occur 14 days after the Effective Date or after the 12th Installment Payment (in the total amount of \$169,999.92), whichever is later. The second and last distribution will occur 14 days after final monthly Installment Payment (in the total amount of \$170,000.08). For each distribution, the Administrator will mail checks for *pro rata* shares of Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment from each distribution shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

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

1 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
2 Employees (including those for whom Notice Packet was returned undelivered). The
3 Administrator may send Participating Class Members a single check combining the Individual
4 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.

5 4.4.2. The Administrator must conduct a Class Member Address Search for all
6 other Class Members whose checks are returned undelivered without USPS forwarding address.
7 Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the
8 USPS forwarding address provided or to an address ascertained through the Class Member
9 Address Search. The Administrator need not take further steps to deliver checks to Class Members
10 whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a
11 replacement check to any Class Member whose original check was lost or misplaced, requested
by the Class Member prior to the void date.

12 4.4.3. For any Class Member whose Individual Class Payment check or
13 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
14 shall transmit the funds represented by such checks to the California Controller's Unclaimed
15 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
16 the requirements of California Code of Civil Procedure Section 384, subd. (b).

17 4.4.4. The payment of Individual Class Payments and Individual PAGA
18 Payments shall not obligate Defendant to confer any additional benefits or make any additional
19 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
this Agreement.

20 **5. [OMITTED]**

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

24 6.1 Plaintiff's Release. Plaintiff and her respective former and present spouses,
25 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
26 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
27 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have

1 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
2 that were, or reasonably could have been, alleged based on facts contained in the Operative
3 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.3,
4 below ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to
5 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
6 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
7 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
8 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
9 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
10 notwithstanding such different or additional facts or Plaintiff's discovery of them. This release
does not apply to Defendant Daimond Wipes International, Inc., or any of its officers, directors,
employees or agents.

11 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
12 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
13 and benefits, if any, of section 1542 of the California Civil Code, which reads:

14
15 **A general release does not extend to claims that the creditor or releasing party does**
16 **not know or suspect to exist in his or her favor at the time of executing the release,**
17 **and that if known by him or her would have materially affected his or her settlement**
with the debtor or Released Party.

18 6.2 Release by Participating Class Members: All Participating Class Members, on
19 behalf of themselves and their respective former and present representatives, agents, attorneys,
20 heirs, administrators, successors, and assigns, release Released Parties from all claims stated in
21 the Operative Complaint and those based solely upon the facts alleged in the Operative
22 Complaint. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do
23 not release any other claims, including claims for vested benefits, wrongful termination, violation
24 of the Fair Employment and Housing Act, unemployment insurance, disability, social security,
25 workers' compensation, or claims based on facts occurring outside the Class Period. This release
does not apply to Defendant Daimond Wipes International, Inc., or any of its officers, directors,
employees or agents.

26 6.3 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that
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1 could have been sought by the Labor Commissioner for the violations identified in Plaintiff's
2 pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
3 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. This
4 release does not apply to Defendant Daimond Wipes International, Inc., or any of its officers,
5 directors, employees or agents.

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

9 7.1 Defense Counsel and Defendant represent that they are not aware of any other
10 pending matter or action asserting claims that will be extinguished or adversely affected by the
11 Settlement.

12 7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
13 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
14 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
15 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
16 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
17 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
18 from the Administrator attaching its "not to exceed" bid for administering the Settlement and
19 attesting to its willingness to serve; competency; operative procedures for protecting the security
20 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
21 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
22 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
23 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
24 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
25 and/or the Administrator; and (v) a signed declaration from each Class Counsel firm attesting to
26 its competency to represent the Class Members; its timely transmission to the LWDA of all
27 necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
28 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
section 2699, subd. (l)(2)).

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

1 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
2 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
3 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
4 Approval to the Administrator.

5 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
6 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
7 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
8 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
9 Preliminary Approval or conditions Preliminary Approval on any material change to this
10 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
11 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
12 otherwise satisfy the Court's concerns.

12 **8. SETTLEMENT ADMINISTRATION.**

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

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

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

25 8.4 Notice to Class Members.

26 8.4.1 No later than three (3) business days after receipt of the Class Data, the
27 Administrator shall notify Class Counsel that the list has been received and state the number of
28 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.

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

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

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

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

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

25 8.5 Requests for Exclusion (Opt-Outs).

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

1 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an
2 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
3 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
4 the Class Member's election to be excluded from the Settlement and includes the Class Member's
5 name, address and email address or telephone number. To be valid, a Request for Exclusion must
6 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

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

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

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

23 8.6 Challenges to Calculation of Work Weeks. Each Class Member shall have 60
24 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
25 Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and
26 PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known
27 as a dispute. A Work Week Dispute form, attached as Exhibit C, may be used for this purpose
but is not required. The Class Member may challenge the allocation by communicating with the

Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Work Weeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Work Weeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Work Weeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's 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 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

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

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

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

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

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

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

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

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

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

1 8.8.6 Final Report by Administrator. Within 10 days after the Administrator
2 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
3 and Defense Counsel with a final report detailing its disbursements by employee identification
4 number only of all payments made under this Agreement. At least 15 days before any deadline
5 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
6 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
7 payments required under this Agreement. Class Counsel is responsible for filing the
8 Administrator's declaration in Court.

9 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,
10 Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 244 Class
11 Members and 19,396.00 Total Work Weeks during the Class period. If the Work Weeks and/or
12 Class Members as of the date the Court approves the settlement exceeds the referenced 19,396.00
13 Work Weeks and/or 244 Class Members by more than 10.00%, the Gross Settlement Amount,
14 including the Class Counsel Fees Payment, the Class Representative Service Payment, and the
15 LWDA payment, will increase proportionally according to the number of additional Work Weeks
16 or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

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

26 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
27 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
28 that includes a request for approval of the PAGA settlement under Labor Code section 2699,

1 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for
2 Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel prior to
3 filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet
4 and confer in person or by telephone, and in good faith, to resolve any disagreements concerning
the Motion for Final Approval.

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

9 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
10 Approval on any material change to the Settlement (including, but not limited to, the scope of
11 release to be granted by Class Members), the Parties will expeditiously work together in good
12 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
13 Approval. The Court’s decision to award less than the amounts requested for the Class
14 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
15 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
modification to the Agreement within the meaning of this paragraph.

16 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
17 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
18 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

19 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
20 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
21 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
22 respective counsel, and all Participating Class Members who did not object to the Settlement as
23 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
24 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
25 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
26 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
27 Parties’ obligations to perform under this Agreement will be suspended until such time as the
appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect

1 the amount of the Net Settlement Amount.

2 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
3 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
4 material modification of this Agreement (including, but not limited to, the scope of release to be
5 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
6 expeditiously work together in good faith to address the appellate court's concerns and to obtain
7 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
8 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
9 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
10 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
11 as long as the Gross Settlement Amount remains unchanged.

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

15 **13. ADDITIONAL PROVISIONS.**

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

1 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
2 Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval
3 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
4 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
5 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
6 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
7 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
8 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
9 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
10 government agency.

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

19 13.3 No Solicitation. The Parties separately agree that they and their respective
20 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
21 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
22 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
23 obligations owed to Class Members.

24 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
25 Agreement together with its attached exhibits shall constitute the entire agreement between the
26 Parties relating to the Settlement, superseding any and all oral representations, warranties,
27 covenants, or inducements made to or by any Party.

28 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
to effectuate its terms, and to execute any other documents reasonably required to effectuate the

1 terms of this Agreement including any amendments to this Agreement.

2 13.6 Cooperation. The Parties and their counsel will cooperate with each other and
3 use their best efforts, in good faith, to implement the Settlement by, among other things,
4 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
5 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
6 the form or content of any document necessary to implement the Settlement, or on any
7 modification of the Agreement that may become necessary to implement the Settlement, the
8 Parties will seek the assistance of a mediator and/or the Court for resolution.

9 13.7 No Prior Assignments. The Parties separately represent and warrant that they
10 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
11 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
12 action, or right released and discharged by the Party in this Settlement.

13 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
14 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
15 Settlement be relied upon as such within the meaning of United States Treasury Department
16 Circular 230 (31 CFR Part 10, as amended) or otherwise.

17 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
18 amended, modified, changed, or waived only by an express written instrument signed by all
19 Parties or their representatives, and approved by the Court.

20 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
21 inure to the benefit of, the successors of each of the Parties.

22 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
23 be governed by and interpreted according to the internal laws of the state of California, without
24 regard to conflict of law principles.

25 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
26 preparation of this Agreement. This Agreement will not be construed against any Party on the
27 basis that the Party was the drafter or participated in the drafting.

28 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
entered during Action and in this Agreement relating to the confidentiality of information shall
survive the execution of this Agreement.

13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant

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

11 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
12 is inserted for convenience of reference only and does not constitute a part of this Agreement.

13 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
14 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
15 weekend or federal legal holiday, such date or deadline shall be on the first business day
16 thereafter.

17 13.17 Notice. All notices, demands or other communications between the Parties in
18 connection with this Agreement will be in writing and deemed to have been duly given as of the
19 third business day after mailing by United States mail, or the day sent by email or messenger,
20 addressed as follows:

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

28 To Defendant:
Gordon C. Strange, Esq.
Law Offices of Gordon C. Strange
15333 Culver Drive
No. 340-223
Irvine, CA 92604
g.strange@edlapc.com

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2 13.18 Execution in Counterparts. This Agreement may be executed in one or more
3 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
4 Agreement shall be accepted as an original. All executed counterparts and each of them will be
5 deemed to be one and the same instrument if counsel for the Parties will exchange between
6 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
7 the existence and contents of this Agreement.

8 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
9 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
10 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
11 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
12 process.

13 Dated: _____, 2025

By: _____
14 MARIA DE LA LUNA HUERTA

15
16 Dated: February 27, 2026

By: 
17 Ted Salac
18 Chief Financial Officer
19 Workforce Personnel, Inc.

20 THE SPIVAK LAW FIRM

21 Dated: 03 / 09 / 2026, 2025

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

26 BENOWITZ LAW CORPORATION

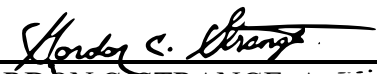
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Dated: 03 / 09 / 2026, 2025

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

LAW OFFICES OF GORDON C. STRANGE

Dated: February 27, 2026

By: 
GORDON C. STRANGE, Attorneys for
Defendant, WORKFORCE
PERSONNEL, INC.

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EXHIBIT A

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

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

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

6 **You may be eligible to receive money** from an employee class action lawsuit (“Action”) against Workforce Personnel, 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 Workforce Personnel, Inc. employed at Diamond Wipes International, Inc.’s Chino location as an hourly, non-exempt employee during the Class Period of September 19, 2018 to the date of preliminary approval of this Settlement (“Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all individuals Defendant Workforce Personnel, Inc. employed at Diamond Wipes International, Inc.’s Chino location as an hourly, non-exempt employee during the PAGA Period of September 7, 2021 to the date of preliminary approval of this Settlement (“Aggrieved Employees”).

13 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”).

16 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>>.

26 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. If you opt-out of the Settlement, you will not receive an Individual
23 Class Payment. You will, however, preserve your right to personally pursue Class Period claims
24 for California labor law violations against Defendant, and, if you are an Aggrieved Employee,
25 remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of
26 the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	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

The Opt-out Deadline is <<RESPONSE DEADLINE>>	longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiff releases Defendant from civil penalties it may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / Pay Periods Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many 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 <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.

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

1 represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm and Louis
2 M. Benowitz of Benowitz Law Corporation (“Class Counsel.”)

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

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

6 So far, the Court has made no determination whether Defendant or Plaintiff is correct on the
7 merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an
8 effort to resolve the Action by negotiating an end the case by agreement (settle the case) rather
9 than continuing the expensive and time-consuming process of litigation. The negotiations were
10 successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to
11 jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff
12 and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final
13 Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By
14 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
19 approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and
20 scheduled a hearing to determine Final Approval.

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

22 A. Gross Settlement Amount. Defendant Will Pay \$340,000.00 as the Gross
23 Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement
24 into an account controlled by the Administrator of the Settlement. The Administrator will use the
25 Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments,
26 Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the
27 Administrator’s expenses, and penalties to be paid to the California Labor and Workforce
28 Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will
fund the Gross Settlement in 24 Installment Payments. Defendant will deposit the first Installment
Payment of \$14,166.66 of the Gross Settlement into an account controlled by the Administrator
of the Settlement within 14 days of the Court granting Final Approval. Thereafter, Defendant will
make 23 monthly contributions to the account controlled by the Administrator 4. The next 22
Installment Payments will also be in the amount of \$14,166.66. the last Installment Payment will
be in the amount of \$ 14,166.82. Defendant will make each of the next 23 payments every 30
days thereafter. Defendant will also fund the amounts necessary to fully pay Defendant’s share
of payroll taxes by transmitting the funds to the Administrator for each distribution. The Judgment

1 will be final on the date the Court enters Judgment, or a later date if Participating Class Members
2 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 \$113,333.33 (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 Award. 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 \$12,000.00 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 the date of the Settlement, there are
22 244 Class Members and 19,396.00 total Work Weeks during the Class period. If the Work Weeks
23 and/or Class Members as of the date the Court approves the Settlement exceeds the referenced
24 19,396.00 Work Weeks and/or 244 Class Members by more than 10.00%, the Gross Settlement
25 Amount, including the Class Counsel Fees Payment, the Class Representative Service Payment,
26 and the LWDA payment, will increase proportionally according to the number of additional Work
27 Weeks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

28 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.

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

1 PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
2 Forms.

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

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

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

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

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

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

H. Administrator. The Court has appointed a neutral company, Apex Class Action
(the "Administrator") to send this Notice, calculate and make payments, and process Class
Members' Requests for Exclusion. The Administrator will also decide Class Member disputes
over Work Weeks, mail and re-mail settlement checks and tax forms, and perform other tasks

1 necessary to administer the Settlement. The Administrator's contact information is contained in
2 Section 9 of this Notice.

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

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

8 All Participating Class Members, on behalf of themselves and their respective
9 former and present representatives, agents, attorneys, heirs, administrators,
10 successors, and assigns, release Released Parties from all claims stated in the
Operative Complaint and those based solely upon the facts alleged in the Operative
11 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
12 Participating Class Members do not release any other claims, including claims for
vested benefits, wrongful termination, violation of the Fair Employment and
13 Housing Act, unemployment insurance, disability, social security, workers'
compensation, or claims based on facts occurring outside the Class Period.
14 "Released Parties" does not include Diamond Wipes International Inc. or any of
its officers, directors, employees or agents.

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

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

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

23 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
24 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
25 by each individual Aggrieved Employee.

26 C. Workweek/Pay Period Challenges. The number of Class Work Weeks you worked
27 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA

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

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

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

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

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

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

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

26 Email, fax, or mail a written and signed letter with your name, present address, telephone
27 number, and a simple statement that you do not want to participate in the Settlement. You may
28 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.

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

2 Only Participating Class Members have the right to object to the Settlement. Before deciding
3 whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to
4 approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will
5 file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why
6 the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Class
7 Representative Service Payment stating (i) the amount Class Counsel is requesting for attorneys'
8 fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative
9 Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section
10 9 of this Notice) will send you copies of these documents at no cost to you. You can also view
11 them and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR
12 WEBSITE>> or the Court's website <<COURT WEBSITE>>.

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

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

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

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

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

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

4 The Agreement sets forth everything Defendant and Plaintiff have promised to do under the
5 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
6 Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE
7 NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator
8 using the contact information listed below, or consult the Superior Court website by going to
9 (<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>>.

10 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION** 11 **ABOUT THE SETTLEMENT.**

12 Class Counsel:

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

18 Administrator:

19 Name of Company: Apex Class Action
20 Email Address: _____
21 Mailing Address: _____
Telephone: _____
22 Fax Number: _____

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

24 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
25 as long as you request a replacement before the void date on the face of the original check. If
26 your check is already void, you should consult the Unclaimed Property Fund
27 (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can
28 contact the Unclaimed Property Fund at (800) 992-4647.

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

2 To receive your check, you should immediately notify the Administrator if you move or otherwise
3 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**
3 Case No. CIVSB2220822

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

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

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

12 *Margarita Perez, et al. v. Workforce Personnel, Inc. Class Action Administrator*
13 c/o ____

14 ____
15 ____

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

22 ____
23 (Typed or Printed Name)

24 ____
25 (Address)

26 ____
27 (City, State, Zip Code)

28 ____
(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

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 September 19, 2018 and <<the date the Court preliminarily approves
12 this class action settlement>> and eligible PAGA Pay Periods you worked between September
13 7, 2021 and <<the date the Court preliminarily approves this class action settlement>>. “Work
14 Week” means any week during which a Class Member worked for Defendant or any other
15 Released Party for at least one day, during the Class Period. “PAGA Pay Period” means any Pay
16 Period during which an Aggrieved Employee worked for Defendant or any other Released Party
17 for at least one day during the PAGA Period. The number of Work Weeks and PAGA Pay Periods
18 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 September 19, 2018 and <<the date the Court preliminarily approves this class action
22 settlement>> and <<number of PAGA Pay Periods>> PAGA Pay Periods between September 7,
23 2021 through <<the date the Court preliminarily approves this class action settlement>>.

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

25 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment
26 in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable
27 payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This
28 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

1 forth above is incorrect. The Administrator will resolve any dispute based upon Defendant's
2 records and any information you provide. Please be advised that the information on this Work
3 Weeks/PAGA Pay Periods Dispute Form is presumed to be correct unless the documents you
submit are company records from Defendant.

6 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK**
7 **WEEKS OR PAGA PAY PERIODS, RECEIPT OF A SETTLEMENT PAYMENT, OR**
8 **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):

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

Executed on _____, 2023

(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
[ADDRESS]

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EXHIBIT E

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

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

16 *Plaintiff(s),*

17 vs.

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

21 *Defendant(s).*
22
23
24

Case No. CIVSB2220822

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

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

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

1 Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement
2 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

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

12 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
13 all individuals Defendant Workforce Personnel, Inc. (“Defendant”) employed at Diamond Wipes
14 International, Inc.’s Chino location as an hourly, non-exempt employee during the Class Period
15 (collectively “Class Members”). The “Class Period” shall mean the period of time from
16 September 19, 2018, through the date of preliminary approval of this Settlement.
17

18 3. Based on its records, Defendant estimates that, as of the date of the Settlement
19 Agreement, (1) there are 244 Class Members and 19,396.00 Total Work Weeks during the Class
20 period. If the Work Weeks and/or Class Members as of the date the Court approves the settlement
21 exceeds the referenced 19,396.00 Work Weeks and/or 244 Class Members by more than 10.00%,
22 the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class
23 Representative Service Payment, and the LWDA payment, will increase proportionally according
24 to the number of additional Work Weeks or Class Members, whichever results in a higher increase
25 in the Gross Settlement Amount.
26
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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 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

1 Administrator shall notify Class Counsel that the list has been received and state the number of
2 Class Members, Aggrieved Employees, Work Weeks, and PAGA Pay Periods in the Class Data.

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

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

21 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law
22 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s
23 contact information is Gordon C. Strange, Esq., Law Offices of Gordon C. Strange, 15333 Culver
24 Drive, No. 340-223, Irvine, CA 92604.
25

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

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

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

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

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

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

24 17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days
25 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
26 whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and/or PAGA
27

1 Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a
2 dispute. A Work Week Dispute form, attached as Exhibit C to the Settlement Agreement, may
3 be used for this purpose but is not required. The Class Member may challenge the allocation by
4 communicating with the Administrator via fax, email or mail. The Administrator must encourage
5 the challenging Class Member to submit supporting documentation. In the absence of any
6 contrary documentation, the Administrator is entitled to presume that the Work Weeks contained
7 in the Class Notice are correct so long as they are consistent with the Class Data. The
8 Administrator's determination of each Class Member's allocation of Work Weeks and/or PAGA
9 Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The
10 Administrator shall promptly provide copies of all challenges to calculation of Work Weeks
11 and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's
12 determination the challenges.

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

19 19. Participating Class Members may send written objections to the Administrator, by
20 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
21 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
22 Participating Class Member who elects to send a written objection to the Administrator must do
23 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
24 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
25 to the Settlement Agreement as Exhibit D may be used for this purpose but is not required.
26
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20. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

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

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

23. The Court approves, for settlement purposes only, David Glenn Spivak of The 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

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’s Motion for Final Approval of a Class Action Settlement pursuant
26 to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action
27 Settlement and Release of Claims (the “Settlement”) filed herewith which provides for a Gross
28 Settlement Amount (“GSA”) of up to \$340,000.00 in compromise of all disputed claims on behalf

1 of all individuals Defendant Workforce Personnel, Inc. (“Defendant”) employed at Diamond
2 Wipes International, Inc.’s Chino location as an hourly, non-exempt employee during the Class
3 Period of September 19, 2018 to the date of preliminary approval of this Settlement. All
4 capitalized terms used herein shall have the same meaning as defined in the Settlement.

5 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
6 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
7 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
8 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
9 and the evidence and argument received by the Court in conjunction with the motions for
10 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
11 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
12 DETERMINATIONS¹:
13

14
15 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
16 to the Action, including all Class Members. Pursuant to this Court’s Order Granting Preliminary
17 Approval of Class Action Settlement of ____, the Notice Packet was sent to each Class Member
18 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
19 Settlement, their right to receive their proportional share of the Settlement, their right to request
20 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
21 person or by counsel at the final approval hearing and be heard regarding final approval of the
22 Settlement. Adequate periods of time were provided by each of these procedures. No member of
23 the Settlement Class presented written objections to the proposed Settlement as part of this notice
24

25
26
27 ¹ 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 process, stated an intention to appear, or actually appeared at the final approval hearing.

2 2. For purposes of this Final Order and Judgment, the Class Members are all
3 individuals Defendant Workforce Personnel, Inc. employed at Diamond Wipes International,
4 Inc.'s Chino location as an hourly, non-exempt employee during the Class Period of September
5 19, 2018 to the date of preliminary approval of this Settlement.
6

7 3. The Court finds and determines that the notice procedure afforded adequate
8 protections to Class Members and provides the basis for the Court to make an informed decision
9 regarding final approval of the Settlement based on the responses of Class Members. The Court
10 finds and determines that the notice provided in this case was the best notice practicable, which
11 satisfied the requirements of law and due process as to all persons entitled to such notice.
12

13 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
14 resolution set forth in this Settlement will release and discharge the Released Claims by way of
15 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
16 of any kind by each and all of the Settlement Class Members (including participation to any extent
17 in any representative or collective action) against the Released Parties. This release will not take
18 effect until Defendant has paid the Gross Settlement Amount in full per this Settlement
19 Agreement.
20

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

25 **“Released Claims”** shall mean all claims stated in the Operative Complaint and based
26 solely on the facts alleged in the Operative Complaint. **“Released Parties”** shall mean Defendant,
27

1 its officers, directors, employees and agents. “Released Parties” does not include Diamond Wipes
2 International Inc. or any of its officers, directors, employees or agents.

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

15
16 3. The Court finds and determines that (a) the Settlement Shares to be paid to
17 Participating Class Members and (b) the LWDA payment as civil penalties under the California
18 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
19 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
20 final approval to, and orders the payment of, those amounts be made to the Participating Class
21 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
22 accordance with the terms of the Settlement.
23

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

26 a. Class Counsel fees & costs of \$113,333.33 in attorneys’ fees and
27

1 \$ _____ in litigation costs to Class Counsel;

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

4 c. \$12,000.00 in costs of the Administrator payable to Apex Class Action for
5 its services as the Administrator; and

6 d. Payment of \$3,750.00 (75% of the \$5,000.00 PAGA Penalties) to the
7 LWDA.
8

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

16 8. Defendant shall deposit the first Installment Payment of \$14,166.66 of the Gross
17 Settlement into an account controlled by the Administrator of the Settlement within 14 days of
18 this Final Order and Judgment. Thereafter, Defendant shall make 23 monthly contributions to the
19 account controlled by the Administrator 4. The next 22 Installment Payments shall also be in the
20 amount of \$14,166.66. the last Installment Payment shall be in the amount of \$ 14,166.82.
21 Defendant shall make each of the next 23 payments every 30 days thereafter. Defendant shall also
22 fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the
23 funds to the Administrator for each distribution.
24

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

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

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

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

12 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
13 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant
14 deposits funds for distribution by the Administrator to Participating Class Members in accordance
15 with the Settlement.
16

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

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

21 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
22 provided by the Settlement and this Final Order and Judgment.
23

24 16. The Settlement is not an admission by Defendant nor is this Final Order and
25 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendant.
26 Furthermore, the Settlement is not a concession by Defendant and shall not be used as an
27

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

13 17. This document shall constitute a Judgment for purposes of California Rule of
14 Court 3.769(h).
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16 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
17

18
19 **DATE**

THE HONORABLE JOSEPH T. ORTIZ
SUPERIOR COURT JUDGE

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

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

Executed on December 10, 2025, at San Antonio, Texas.

BLANCA A. EDWARDS,
Member of the American Translator Association
Member No. 105357, since 01/10/2024

1 DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Teléfono: (213) 725-9094
6 Facsímil: (213) 634-2485

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
todas las demás personas en situación similar, y
14 en el público en general, y como “Empleadas
Agravadas” en nombre de otros “Empleados
15 Agravados” y del Estado de California de
conformidad con la Ley de Abogados Generales
16 Privados del Código Laboral de 2004,

17 *Demandantes,*

18
19 vs.

20 WORKFORCE PERSONNEL, INC.,
corporación de California; DIAMOND WIPES
21 INTERNATIONAL, INC., corporación de
California; y DOES 1–50, inclusive,

22 *Demandado(s).*
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26
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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

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ABOGADOS ADICIONALES DE LAS DEMANDANTES

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

ABOGADOS DE LOS DEMANDADOS

GORDON C. STRANGE – Licencia del Colegio de Abogados del Estado No. 108684
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Abogados del Demandado,
WORKFORCE PERSONNEL, INC.

1 El presente Acuerdo de Liquidación de la Acción de Grupo y PAGA (“Acuerdo”) se
2 celebra entre la demandante Maria De La Luna Huerta (“Demandante”), y el demandado
3 Workforce Personnel, Inc. (“Demandado”). El Acuerdo se refiere a la Demandante y al
4 Demandado colectivamente como “Partes” o individualmente como “Parte”.

1. DEFINICIONES.

5 1.1. “Acción” se refiere a la demanda por la Demandante por supuestas violaciones de
6 salarios y horas de trabajo contra Workforce Personnel, Inc. titulada “MARGARITA PEREZ y
7 MARIA DE LA LUNA HUERTA en nombre propio y en el de todas las demás personas en
8 situación similar, y en nombre del público en general, y como “Empleadas agraviadas” en nombre
9 de otros “Empleados agraviados” y del Estado de California de conformidad con la Ley de
10 Abogados Generales Privados del Código Laboral de 2004, *Demandante(s)*, contra
11 WORKFORCE PERSONNEL, INC., una corporación de California; DIAMOND WIPES
12 INTERNATIONAL, INC., una corporación de California; y DOES 1–50, inclusive,
13 *Demandado(s)*, Caso No. CIVSB2220822 iniciado el 19 de septiembre de 2022 y pendiente en
14 el Tribunal Superior del Estado de California, Condado de San Bernardino.

15 1.2. “Administrador” se refiere a Apex Class Action, la entidad neutral que las Partes han
16 acordado designar para administrar el Acuerdo.

17 1.3. “Pago de Gastos de Administración” se refiere al monto que se le pagará al
18 Administrador con cargo al Monto Bruto del Acuerdo para reembolsar sus honorarios y gastos
19 razonables de conformidad con la oferta de “no exceder” presentada por el Administrador ante
20 el Tribunal en relación con la Aprobación Preliminar del Acuerdo.

21 1.4. “Empleado Agraviado” se refiere a una persona empleada por Workforce Personnel,
22 Inc. en las instalaciones Diamond Wipes International, Inc. en su ubicación de Chino como
23 empleado por hora no exento durante el Período PAGA.

24 1.5. “Grupo” se refiere a todas las personas empleadas por Workforce Personnel, Inc. en
25 las instalaciones de Diamond Wipes International, Inc. en su ubicación de Chino como
26 empleados por hora no exentos durante el Período del Grupo.

27 1.6. “Abogado del Grupo” se refiere a David Glenn Spivak de The Spivak Law Firm y
28 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.

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

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

1.10. “Búsqueda de direcciones de los Miembros del Grupo” se refiere a la investigación y búsqueda por parte del Administrador de las direcciones postales actuales de los Miembros del Grupo utilizando todas las fuentes, métodos y medios razonablemente disponibles, 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.

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

1.12. “Período del Grupo” se refiere al período comprendido entre el 19 de septiembre de 2018 y la fecha de aprobación preliminar de este Acuerdo.

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

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

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

1.16. “Demandado” se refiere a Workforce Personnel, Inc.

1.17. “Abogado de la Defensa” se refiere a Gordon C. Strange del bufete Law Offices of Gordon C. Strange.

1.18. “Fecha de entrada en vigor” se refiere a la fecha en la que hayan ocurrido las dos 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 las siguientes circunstancias: (a) si ningún Miembro del Grupo Participante se opone al Acuerdo, 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 contra la Sentencia; o 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 \$340,000.00, 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. El Monto Bruto del Acuerdo se utilizará para pagar los Pagos Individuales del Grupo, los Pagos Individuales de PAGA, el Pago de PAGA a la LWDA, los Honorarios del Abogado del Grupo, los Gastos de Litigio del Abogado del Grupo, el Pago de Servicios de Representante del Grupo y los 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 Semanas Laborales trabajadas 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.

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 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 ejecutivos, directores, empleados y agentes. Las “Partes Exoneradas” no incluyen a Diamond Wipes International Inc. ni a ninguno de sus ejecutivos, directores, empleados o agentes.

1.43. “Solicitud de Exclusión” se refiere a la entrega por parte de un Miembro del Grupo 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.

1.44. “Fecha Límite de Respuesta” se refiere a los sesenta (60) días después de que el Administrador envíe por correo el Aviso a los Miembros del Grupo y a los Empleados Agraviados, y será la última fecha en la que los Miembros del Grupo podrán: (a) enviar por fax, correo electrónico o correo postal una Solicitud de Exclusión del Acuerdo, o (b) enviar por fax, correo electrónico o correo postal su Objeción al Acuerdo. Los Miembros del Grupo a quienes se les 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.

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

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.

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

2. CONSIDERANDOS.

2.1. El 19 de septiembre de 2022, se inició esta Acción mediante la presentación de una Demanda en la que alegaba causas de acción contra el Demandado por no pagar salarios, por hacer deducciones salariales no autorizadas e ilegales, por no proporcionar períodos de comida, por no autorizar ni permitir períodos de descanso, por no emitir nóminas salariales adecuadas, 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.

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

2.3. El 19 de marzo de 2025, las Partes, participaron 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

1 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2 2.5. El Tribunal no ha otorgado la certificación del grupo.

3 2.6. Las Partes, el Abogado del Grupo y el Abogado de la Defensa manifiestan que no
4 tienen conocimiento de ningún otro asunto o acción pendiente que presente reclamaciones que
5 se extinguirán o se verán afectadas por este Acuerdo.

6 **3. TÉRMINOS MONETARIOS.**

7 3.1. Monto Bruto del Acuerdo. Salvo que se disponga lo contrario en el Párrafo 9 más
8 adelante, el Demandado se compromete a pagar \$340,000.00 y nada más como Monto Bruto del
9 Acuerdo y a pagar por separado todos los impuestos sobre la nómina que se adeuden por las
10 partes salariales de los Pagos Individuales del Grupo. El Demandado no tiene obligación de pagar
11 el Monto Bruto del Acuerdo (ni ningún impuesto sobre la nómina) antes de la fecha límite
12 establecida en el Párrafo 4.3 del presente Acuerdo. El Administrador desembolsará el Monto
13 Bruto del Acuerdo en su totalidad sin solicitar ni exigir a los Miembros del Grupo Participantes
14 ni a los Empleados Agraviados que presenten alguna reclamación como condición para el pago.
15 Ninguna parte del Monto Bruto del Acuerdo se devolverá al Demandado.

16 3.2. Pagos con cargo al Monto Bruto del Acuerdo. El Administrador realizará y deducirá
17 los siguientes pagos con cargo al Monto Bruto del Acuerdo, en los montos especificados por el
18 Tribunal en la Aprobación Final:

19 3.2.1. A la Demandante: Pago de Servicios de Representante del Grupo a la
20 Representante del Grupo el monto de no más de \$5,000.00 (además de su Pago Individual como
21 miembro del Grupo y su Pago Individual de PAGA que la Representante del Grupo tenga derecho
22 a recibir como Miembro del Grupo Participante). El Demandado no se opondrá a la solicitud de
23 la Demandante de un Pago de Servicios de Representante del Grupo que no exceda este monto.
24 Como parte de la Moción para el Pago de Honorarios del Abogado del Grupo y el Pago de Gastos
25 de Litigio del Grupo, la Demandante solicitará la aprobación del Tribunal para cualquier Pago
26 de Servicios de Representante del Grupo en un plazo máximo de 16 días hábiles antes de la
27 Audiencia de Aprobación Final. Si el Tribunal aprueba el Pago de Servicios de Representante
28 del Grupo inferior al monto solicitado, el Administrador retendrá el resto en el Monto Neto del
Acuerdo. El Administrador pagará el Pago de Servicios de Representante del Grupo utilizando
el Formulario 1099 del IRS. La Demandante asume toda responsabilidad y obligación por los
impuestos laborales adeudados sobre el Pago de Servicios de Representante del Grupo.

3.2.2. Al Abogado del Grupo: El Pago de Honorarios del Abogado del Grupo que
no supere un tercio del Monto Bruto del Acuerdo, que actualmente se estima en \$113,333.33 y

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

18 3.2.3. Al Administrador: Un Pago de Gastos del administrador que no supere más
19 de \$12,000.00, excepto que se demuestre una causa justificada y según lo aprobado por el
20 Tribunal. En la medida en que los Gastos administrativos sean menores o el Tribunal apruebe un
21 pago inferior a \$12,000.00, el Administrador retendrá el resto en el Monto Neto del Acuerdo.

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

26 3.2.4.1. Asignación de Impuestos de Pagos Individuales del Grupo. El
27 33.33% del Pago Individual del Grupo de cada Miembro del Grupo Participante se asignará a la
28 liquidación de las reclamaciones salariales (la “Porción Salarial”). Las Porciones Salariales están
sujetas a retención fiscal y se declararán en el formulario W-2 del IRS. El 66.67% 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.

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 Administrador declarará los Pagos Individuales de PAGA en los Formularios 1099 del IRS.

4. FINANCIACIÓN Y PAGOS DE LIQUIDACIÓN.

4.1. Semanas Laborales del Grupo y Períodos de Pago de los Empleados Agraviados. Basándose en una revisión de los registros h la fecha, el Demandado estima que hay 244 Miembros del Grupo que trabajaron colectivamente un total de 19,396 Semanas Laborales.

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

1 problema relacionado con los Datos del Grupo que falten o se hayan omitido.

2 4.3. Financiación del Monto Bruto del Acuerdo. El Demandado financiará íntegramente
3 el Monto Bruto del Acuerdo, asimismo financiará los montos necesarios para pagar íntegramente
4 la participación que le corresponde de los impuestos sobre la nómina, transfiriendo los fondos al
5 Administrador. El Demandado financiará el Monto Bruto del Acuerdo en 24 pagos a plazos
6 (cada uno denominado “Pago a Plazos”). El Demandado depositará el primer Pago a Plazos de
7 \$14,166.66 del Monto Bruto del Acuerdo, en una cuenta controlada por el Administrador del
8 Acuerdo dentro de los 14 días siguientes a la Aprobación Definitiva del Tribunal. Posteriormente,
9 el Demandado realizará 23 contribuciones mensuales a la cuenta controlada por el Administrador
10 4. Los siguientes 22 Pagos a Plazos también serán por un monto de \$14,166.66, siendo el último
11 Pago a Plazos por un monto de \$14,166.82. El Demandado realizará cada uno de los siguientes
12 23 pagos cada 30 días de ahí en adelante. El Demandado también financiará las cantidades
13 necesarias para pagar íntegramente la parte que le corresponde de los impuestos sobre la nómina,
14 transfiriendo los fondos al Administrador para cada distribución.

15 4.4. Pagos del Monto Bruto del Acuerdo. El Administrador realizará un total de dos
16 distribuciones. La primera distribución se realizará 14 días después de la Fecha de Entrada en
17 Vigor o después del Pago a Plazos número doce (12) (por un monto total de \$169,999.92), lo que
18 ocurra primero. La segunda y última distribución se realizará 14 días después del último pago
19 mensual del Pago a Plazos (por un monto total de \$170,000.08). Para cada distribución, el
20 Administrador enviará por correo cheques por las partes prorrateadas de los Pagos Individuales
21 del Grupo, todos los Pagos Individuales de PAGA, el Pago de PAGA a la LWDA, el Pago de
22 Gastos de Administración, el Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de
23 Litigio del Abogado del Grupo y el Pago de Servicios del Representante del Grupo. El
24 desembolso del Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del
25 Abogado del Grupo y el Pago de Servicios del Representante del Grupo de cada distribución no
26 precederá al desembolso de los Pagos Individuales del Grupo y los Pagos Individuales de PAGA.

27 4.4.1. El Administrador emitirá cheques correspondientes a los Pagos Individuales del
28 Grupo y/o los Pagos Individuales de PAGA y los enviará a los Miembros del Grupo por correo
postal de primera clase de Estados Unidos (First Class U.S. Mail), con franqueo prepago. En
el anverso de cada cheque se indicará de forma destacada la fecha (no menos de 180 días después
de la fecha de envío) en la que se anulará el cheque. El Administrador cancelará todos los cheques
no se hayan cobrado antes de la fecha de anulación. El Administrador enviará cheques
correspondientes a los Pagos Individuales de Liquidación a todos los Miembros del Grupo
Participantes (incluidos aquellos cuyo Paquete de Aviso haya sido devuelto sin entregar). El
Administrador enviará cheques correspondientes a los Pagos Individuales de PAGA a todos los

1 Empleados agraviados, incluidos los Miembros del Grupo no participantes que califiquen como
2 Empleados agraviados (incluidos aquellos cuyo Paquete de Aviso haya sido devuelto por no
3 haberse podido entregar). El Administrador puede enviar a los Miembros del Grupo Participantes
4 un solo cheque que combine el Pago Individual del Grupo y el Pago Individual de PAGA. Antes
5 de enviar los cheques por correo postal, el Administrador debe actualizar las direcciones
6 postales de los destinatarios utilizando la Base de Datos Nacional de Cambios de Dirección.

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

17 4.4.3. Para los Miembros del Grupo cuyo cheque de Pago Individual del Grupo o cheque
18 de Pago Individual de PAGA no se haya cobrado y se haya cancelado después de la fecha de
19 anulación, el Administrador transferirá los fondos representados por dichos cheques al Fondo de
20 Propiedad No Reclamada de la Contraloría de California a nombre del Miembro del Grupo, sin
21 dejar ningún “saldo pendiente” sujeto a los requisitos la Sección 384, subdivisión (b) del Código
22 de Procedimiento Civil de California.

23 4.4.4. El pago de Pagos Individuales del Grupo y los Pagos Individuales de PAGA no
24 obligarán al Demandado a conferir ningún beneficio adicional ni a realizar ningún pago adicional
25 a los Miembros del Grupo (como contribuciones al plan 401(k) o bonificaciones) que no sean los
26 especificados en el presente Acuerdo.

27 **5. [OMITIDO]**

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

6.1 Exoneración de la Demandante. La Demandante a título individual y en nombre y
representación de sus respectivos anteriores y presentes cónyuges, representantes, agentes,
abogados, herederos, administradores, sucesores y cesionarios en general, exoneran y liberan a
las Partes Exoneradas de todas reclamaciones, transacciones o incidente ocurridos durante el
Período del Grupo, incluyendo, entre otros: (a) todas las reclamaciones que se alegaron, o que

1 razonablemente podrían haberse alegado, basadas en los hechos contenidos en la Demanda
2 Operativa y (b) todas las reclamaciones PAGA que se alegaron, o que razonablemente podrían
3 haberse alegado, basadas en los hechos contenidos en la Demanda Operativa, el Aviso PAGA de
4 la Demandante o que se determinaron durante la Acción y se exoneraron de conformidad con el
5 párrafo 6.3 más adelante (“Exoneración de la Demandante”). La Exoneración de la Demandante
6 no se extiende a ninguna reclamación o acción para hacer cumplir este Acuerdo, ni a ninguna
7 reclamación por beneficios adquiridos, beneficios de desempleo, beneficios por discapacidad,
8 beneficios de seguro social, beneficios de compensación laboral que surgieron en cualquier
9 momento o basados en los hechos ocurridos fuera del Período del Grupo. La Demandante
10 reconoce que puede descubrir hechos o leyes diferentes o adicionales a los hechos o leyes que
11 ahora conoce o cree que son ciertos, pero acepta, no obstante, que la exoneración de la
12 demandante será y seguirá siendo efectiva en todos los aspectos, independientemente de dichos
13 hechos diferentes o adicionales o del descubrimiento de estos por parte del Demandante. Esta
14 exoneración no se aplica a Diamond Wipes International, Inc., ni a ninguno de sus ejecutivos,
15 directores, empleados o agentes.

16 6.1.1 Renuncia de la Demandante a los derechos que le asisten en virtud de la Sección
17 1542 del Código Civil de California. A los efectos de la Exoneración de la Demandante, la
18 Demandante renuncia expresamente a las disposiciones, derechos y beneficios, si los hubiera, de
19 la sección 1542 del Código Civil de California, que dice lo siguiente:

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

24 6.2 Exoneración de los Miembros del Grupo Participantes: Todos los Miembros del
25 Grupo Participantes, en nombre propio y en el de sus respectivos anteriores y presentes
26 representantes, agentes, abogados, herederos, administradores, sucesores y cesionarios eximen a
27 las Partes Exoneradas de todas las reclamaciones establecidas en la Denuncia Operativa y las
28 reclamaciones basadas únicamente en los hechos alegados en la Denuncia Operativa. Salvo lo
establecido en el párrafo 6.3 de este Acuerdo, los Miembros del Grupo Participante no renuncian
a ninguna otra reclamación, incluidas las reclamaciones por beneficios adquiridos, despido
injustificado, violación de la Ley de Empleo y Vivienda Justos, seguro de desempleo,
discapacidad, seguro social, compensación laboral o reclamaciones basadas en hechos ocurridos
fuera del Período del Grupo. Esta exoneración no se aplica a Diamond Wipes International, Inc.,
ni a ninguno de sus ejecutivos, directores, empleados o agentes.

6.3 Exoneración de la Reclamaciones de PAGA. La Demandante exonera todas las
reclamaciones por sanciones civiles que el Comisionado Laboral podría haber interpuesto por las

1 violaciones identificadas en su carta previa a la presentación de la Demandante ante la LWDA.
2 La Demandante no renuncia a la reclamación por salarios o daños y perjuicios de ningún
3 Empleado Agraviado, a menos que dicho Empleado Agraviado sea Miembro del Grupo
4 Participante. Esta exoneración no se aplica a Diamond Wipes International, 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 El Abogado de la Defensa y el Demandado declaran que no tienen conocimiento de
8 ningún otro asunto o acción pendiente en el que se reclamen derechos que se extinguirán o se
verán afectados negativamente por el Acuerdo.

9 7.2 Responsabilidades de la Demandante. La Demandante preparará y entregará al
10 Abogado de la Defensa todos los documentos necesarios para obtener la Aprobación Preliminar,
11 incluidos: (i) una redacción del aviso, y un memorando de apoyo de la Moción para la
Aprobación Preliminar que incluye un análisis del Acuerdo según *Dunk/Kullar* y una solicitud
12 de aprobación del Acuerdo PAGA según la sección 2699, subdivisión (f)(2)) del Código Laboral;
13 (ii) una redacción de la propuesta de la Orden que Otorga la Aprobación Preliminar y la
Aprobación del Acuerdo de PAGA; (iii) una redacción de la propuesta del Paquete de Aviso; (iv)
14 una declaración firmada por el Administrador en la que adjunte su oferta de “no exceder” para
15 administrar el Acuerdo y que certifique su disposición a prestar sus servicios, su competencia y
16 los procedimientos operativos para proteger la seguridad de los Datos del Grupo; los montos de
cobertura del seguro por cualquier violación de la seguridad de los datos, malversación de fondos
17 u otra mala conducta; todos los hechos relevantes para cualquier conflicto de intereses real o
18 potencial con los Miembros del Grupo; y la naturaleza y el alcance de cualquier relación
financiera con la Demandante, el Abogado del Grupo o el Abogado de la Defensa; (v) una
19 declaración firmada por la Demandante que confirme la voluntad y competencia para notificar y
20 divulgar todos los hechos relevantes para cualquier conflicto de intereses real o potencial con los
Miembros del Grupo y/o el Administrador; y (vi) una declaración firmada por cada bufete de
21 Abogados del Grupo que atestigüe su competencia para representar a los Miembros del Grupo;
22 su transmisión oportuna a la LWDA de todos los documentos de PAGA necesarios (notificación
23 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,
24 subdivisión (l)(2) del Código Laboral).

25 7.3 Responsabilidades del Abogado. El Abogado del Grupo y el Abogado de la Defensa
26 son responsables conjuntamente de finalizar y presentar con rapidez la Moción para la
Aprobación Preliminar en un plazo máximo de 30 días después de la firma íntegra del presente
27

1 Acuerdo; obtener una fecha de audiencia inmediata de la Moción para la Aprobación Preliminar;
2 y para comparecer en el Tribunal para defender la Moción para la Aprobación Preliminar. El
3 Abogado del Grupo es responsable de entregar la Aprobación Preliminar del Tribunal al
Administrador.

4 7.4 Obligación de cooperación. Si las Partes no están conformes con algún aspecto de la
5 propuesta de la Moción para la Aprobación Preliminar y/o las declaraciones y documentos de
6 apoyo, el Abogado del Grupo y el Abogado de la Defensa trabajarán conjuntamente en nombre
7 de las Partes, reuniéndose en persona o por teléfono, y de buena fe, para resolver el desacuerdo.
8 Si el Tribunal no concede la Aprobación Preliminar o condiciona la Aprobación Preliminar a
9 cualquier cambio sustancial en este Acuerdo, el Abogado del Grupo y el Abogado de la Defensa
10 trabajarán conjuntamente de forma inmediata en nombre de las Partes, reuniéndose en persona o
por teléfono, y de buena fe, para modificar el Acuerdo y satisfacer así las preocupaciones del
Tribunal.

11 **8. ADMINISTRACIÓN DEL ACUERDO.**

12 8.1 Selección del Administrador. Las Partes han seleccionado conjuntamente a Apex
13 Class Action para que actúe como Administrador y han verificado que, como condición para su
14 nombramiento, Apex Class Action acepta quedar vinculado por el presente Acuerdo y cumplir,
15 en calidad de fiduciario, todas las obligaciones especificadas en el presente Acuerdo a cambio
16 del pago de Gastos de Administración. Las Partes y sus Abogados declaran que no tienen ningún
17 interés ni relación, financiera o de otro tipo, con el Administrador, salvo la relación profesional
derivada de experiencias previas en la administración de acuerdos.

18 8.2 Número de Identificación Patronal. El Administrador deberá tener y utilizar su propio
19 Número de Identificación Patronal para calcular las retenciones de impuestos sobre la nómina y
proporcionar informes a las autoridades fiscales estatales y federales.

20 8.3 Fondo de liquidación calificado. El Administrador establecerá un fondo de
21 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.

22 8.4 Aviso a los Miembros del Grupo.

23 8.4.1 En un plazo máximo de tres (3) días hábiles después de la recepción de los Datos
24 del Grupo, el Administrador notificará al Abogado del Grupo que se ha recibido la lista e indicará
25 el número de Miembros del Grupo, Miembros de PAGA, Semanas laborales y Períodos de Pago
que aparecen en los Datos del Grupo.

26 8.4.2 Haciendo todo lo posible por actuar lo antes posible, y en ningún caso más tarde de

1 14 días después de recibir los Datos del Grupo, el Administrador enviará a todos los Miembros
2 del Grupo identificados en los Datos del Grupo, por correo postal de primera clase del Servicio
3 Postal de los Estados Unidos (“USPS”), el Paquete de Aviso con traducción al español,
4 sustancialmente en los formularios adjuntos a este Acuerdo como **Anexos A, B, C y D**. La
5 primera página del Aviso del Grupo deberá incluir de forma destacada una estimación de los
6 montos en dólares de cualquier Pago Individual del Grupo y/o Pago Individual de PAGA
7 pagadero a los Miembros del Grupo, así como el número de Semanas Laborales y Períodos de
8 Pago de PAGA (si corresponde) utilizados para calcular estos montos. Antes de enviar por correo
9 postal los Paquetes de Aviso, el Administrador actualizará las direcciones de los Miembros del
10 Grupo utilizando la base de datos nacional de cambios de dirección.

11 8.4.3 En un plazo máximo de tres (3) días hábiles después de que el Administrador reciba
12 cualquier Paquete de Aviso devuelto por el Servicio Postal de los Estados Unidos (USPS) como
13 no entregado, el Administrador volverá a enviar el Paquete de Aviso utilizando cualquier
14 dirección de reenvío proporcionada por USPS. Si el USPS no proporciona una dirección de
15 reenvío, el Administrador realizará una Búsqueda de Direcciones de los Miembros del Grupo y
16 volverá a enviar por correo postal el Paquete de Aviso a la dirección más reciente obtenida. El
17 Administrador no tiene la obligación de realizar más intentos para localizar o enviar el Paquete
18 de Aviso a los Miembros del Grupo cuyo Paquete de Aviso haya sido devuelto por el USPS por
19 segunda vez.

20 8.4.4 Los plazos para las objeciones por escrito de los Miembros del Grupo, las
21 impugnaciones de las Semanas Laborales y/o los Períodos de Pago de PAGA (disputas) y las
22 Solicitudes de Exclusión se ampliarán 14 días adicionales además de los 60 días previstos en el
23 Aviso del Grupo para todos los Miembros del Grupo cuyo aviso se vuelva a enviar por correo
24 postal. El Administrador informará al Miembro del Grupo de la ampliación del plazo con el
25 Paquete de Aviso que se vuelva a enviar por correo postal.

26 8.4.5 Si el Administrador, el Demandado o el Abogado del Grupo son contactados por
27 personas o si descubren a personas que creen que deberían haber sido incluidas en los Datos del
28 Grupo y deberían haber recibido el Paquete de Aviso, las Partes se reunirán y consultarán
rápidamente, en persona o por teléfono, y de buena fe, con el fin de acordar si incluirlas como
Miembros del Grupo. Si las Partes así lo acuerdan, dichas personas serán Miembros del Grupo
con los mismos derechos que los demás Miembros del Grupo, y el Administrador les enviará,
por correo electrónico o mensajería de entrega al día siguiente, un Aviso del Grupo en el que se
les requerirá que ejerzan las opciones previstas en el presente Acuerdo en un plazo máximo de
14 días después de la recepción del Aviso del Grupo, o en las fechas límite del Aviso del Grupo,
lo que sea posterior.

25 8.5 Solicitudes de Exclusión (exclusión voluntaria).

26 8.5.1 Los Miembros del Grupo que deseen excluirse (exclusión voluntaria) del
27 Acuerdo del Grupo deberán enviar al Administrador, por fax, correo electrónico o correo postal,
28

1 una Solicitud de Exclusión por escrito y firmada en un plazo máximo de 60 días después de la
2 fecha en que el Administrador envíe por correo el Paquete de Aviso (más 14 días adicionales
3 para los Miembros del Grupo cuyo Paquete de Aviso se vuelva a enviar por correo postal). Una
4 Solicitud de Exclusión es una carta de un Miembro del Grupo o de su representante en la que se
5 comunica de forma razonable la decisión del Miembro del Grupo de ser excluido del Acuerdo y
6 que incluye el nombre, la dirección postal y la dirección de correo electrónico o el número de
7 teléfono del Miembro del Grupo. Para que sea válida, la Solicitud de Exclusión debe enviarse
8 por fax, correo electrónico o por correo con el sello postal correspondiente antes de la fecha límite
9 de respuesta. Usted puede utilizar el formulario de Elección de No Participar en el Acuerdo
10 adjunto como Anexo B, pero no es obligatorio.

11 8.5.2 El Administrador no podrá rechazar una Solicitud de Exclusión como no
12 válida porque no contiene toda la información especificada en el Aviso del Grupo. El
13 Administrador aceptará toda Solicitud de Exclusión como válida si el Administrador puede
14 determinar razonablemente la identidad de la persona como Miembro del Grupo y el deseo del
15 Miembro del Grupo de ser excluido del Acuerdo. La determinación del Administrador será
16 definitiva y no podrá ser objeto de apelación ni impugnación. Si el Administrador tiene motivos
17 suficientes para cuestionar la autenticidad de una Solicitud de Exclusión, el Administrador puede
18 exigir pruebas adicionales de la identidad del Miembro del Grupo.

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

21 8.5.3 Todo Miembro del Grupo que no entregue una Solicitud de Exclusión válida y
22 oportuna se considerará Miembro del Grupo Participante según el presente Acuerdo, con derecho
23 a todos los beneficios y sujeto a todos los términos y condiciones del Acuerdo, incluidas las
24 Exoneraciones de los Miembros del Grupo Participantes estipuladas en los párrafos 6.2 y 6.3 del
25 presente Acuerdo, independientemente de si el Miembro del Grupo Participante recibe
26 efectivamente el Aviso del Grupo o se opone al Acuerdo.

27 8.5.4 Todo Miembro del Grupo que entregue una Solicitud de Exclusión válida y
28 oportuna se considerará Miembro del Grupo No Participante y no recibirá ningún Pago Individual
del Grupo ni tendrá derecho a oponerse a los componentes de la acción de grupo del Acuerdo.
Los Empleados Agraviados tienen derecho a un Pago Individual PAGA.

8.6 Impugnaciones del Cálculo de las Semanas Laborales. Cada Miembro del Grupo
tendrá 60 días después de que el Administrador envíe por correo el Paquete de Aviso (más 14
días adicionales para los Miembros del Grupo cuyo Paquete de Aviso se vuelva a enviar por
correo) para impugnar el número de Semanas Laborales del Grupo y los Períodos de Pago de
PAGA (si los hubiera) asignados al Miembro del Grupo en el Aviso del Grupo. Esto también se
conoce como disputa. Usted puede utilizar el formulario de Disputa de la Semana Laboral adjunto
como Anexo C, para este fin, pero no es obligatorio. El Miembro del Grupo puede impugnar la
asignación comunicándose con el Administrador por fax, correo electrónico o correo

1 postal. El Administrador debe animar al Miembro del Grupo que impugna la asignación a
2 entregar la documentación de respaldo. En falta de documentación que indique lo contrario, el
3 Administrador tiene derecho a suponer que las Semanas Laborales que se incluyen en el Aviso
4 del Grupo son correctas, siempre y cuando sean coherentes con los Datos del Grupo. La
5 determinación del Administrador de la asignación de Semanas laborales y/o Períodos de Pago de
6 PAGA por parte de cada Miembro del Grupo será definitiva y no podrá apelarse ni impugnarse
7 de ninguna manera. El Administrador deberá proporcionar de inmediato copias de todas las
8 impugnaciones al cálculo de las Semanas Laborales y/o los Períodos de Pago de PAGA al
9 Abogado de la Defensa y al Abogado del Grupo, así como la determinación del Administrador
10 sobre las impugnaciones.

11 8.7 Objeciones al Acuerdo.

12 8.7.1 Sólo los Miembros del Grupo Participantes pueden oponerse a los
13 componentes de la acción de grupo del Acuerdo y/o del presente Acuerdo, incluida la
14 impugnación de la imparcialidad del Acuerdo y/o los montos solicitados para el Pago de
15 Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y/o el
16 Pago de Servicios de Representante del Grupo.

17 8.7.2 Los Miembros del Grupo Participantes pueden enviar objeciones por escrito
18 al Administrador, por fax, correo electrónico o correo postal. Como alternativa, los Miembros
19 del Grupo Participantes pueden comparecer en el Tribunal (o contratar a un abogado para que
20 comparezca en el Tribunal) para presentar objeciones verbales en la Audiencia de Aprobación
21 Final. Un Miembro del Grupo Participante que decida enviar una objeción por escrito al
22 Administrador debe hacerlo en un plazo máximo de 60 días después de la fecha de envío por
23 correo del Paquete de Aviso por parte del Administrador (más 14 días adicionales para los
24 Miembros del Grupo cuyo Paquete de Aviso se haya vuelto a enviar por correo). Usted puede
25 utilizar el formulario de Objeción adjunto como Anexo D, para este fin, pero no es obligatorio.

26 8.7.3 Los Miembros del Grupo No Participantes no tienen derecho a oponerse a
27 ninguno de los componentes de la acción de grupo del Acuerdo.

28 8.8 Obligaciones del Administrador. El Administrador tiene la obligación de realizar y
cumplir todas las tareas que le correspondan según lo establecido en el en el presente Acuerdo o
en cualquier otro documento.

8.8.1 Sitio web, dirección de correo electrónico y número gratuito. El
Administrador creará, mantendrá y utilizará un sitio web de Internet para publicar información
de interés para los Miembros del Grupo, incluida la fecha, la hora y el lugar de la Audiencia de
Aprobación Final y copias del Acuerdo de Liquidación, la Moción para la Aprobación Preliminar,
la Aprobación Preliminar, el Paquete de Aviso, la Moción para la Aprobación Final, la Moción
para el Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del Abogado
del Grupo y Pago de Servicios de Representante del Grupo, la Aprobación Final y la Sentencia.
El Administrador también mantendrá y supervisará una dirección de correo

1 electrónico y un número de teléfono gratuito para recibir llamadas, faxes y correos electrónicos
2 de los Miembros del Grupo.

3 8.8.2 Solicitudes de Exclusión (exclusión voluntaria) y Lista de Exclusión. El
4 Administrador revisará oportunamente y de manera continua las Solicitudes de Exclusión para
5 determinar su validez. En un plazo máximo de cinco (5) días después del vencimiento de la fecha
6 límite para enviar las Solicitudes de Exclusión, el Administrador enviará por correo electrónico
7 una lista al Abogado del Grupo y al Abogado de la Defensa que incluya (a) los nombres y otra
8 información identificativa de los Miembros del Grupo que hayan entregado oportunamente
9 Solicitudes de Exclusión válidas (“Lista de Exclusión”); (b) los nombres y otra información
10 identificativa de los Miembros del Grupo que hayan entregado Solicitudes de Exclusión no
11 válidas; (c) copias de todas las Solicitudes de Exclusión del Acuerdo enviadas (ya sean válidas o
12 no válidas).

13 8.8.3 Informes Semanales. El Administrador deberá proporcionar semanalmente
14 informes por escrito al Abogado del Grupo y al Abogado de la Defensa en los que, entre otras
15 cosas, se contabilice el número de: Paquetes de Aviso enviados por correo o reenviados por
16 correo, Paquetes de Aviso devueltos por no haberse podido entregar, Solicitudes de Exclusión
17 (válidas o no válidas) recibidas, objeciones recibidas, impugnaciones de Semanas Laborales y/o
18 Períodos de Pago de PAGA recibidas y/o resueltas, y cheques enviados por correo para los Pagos
19 Individuales del Grupo y los Pagos Individuales de PAGA (“Informe Semanal”). Los Informes
20 Semanales deben incluir la evaluación del Administrador de la validez de las Solicitudes de
21 Exclusión y adjuntar copias de todas las Solicitudes de Exclusión y objeciones recibidas.

22 8.8.4 Impugnaciones de la Semana Laboral y/o del Período de Pago. El
23 Administrador tiene la facultad de abordar y tomar decisiones finales, de conformidad con los
24 términos de este Acuerdo, en cuanto a todas las impugnaciones de los Miembros del Grupo
25 relacionadas con el cálculo de las Semanas Laborales y/o los Períodos de Pago. La decisión del
26 Administrador será definitiva y no podrá ser objeto de apelación ni de impugnación.

27 8.8.5 Declaración del Administrador. En un plazo máximo de 14 días antes de la
28 fecha en que la Demandante debe presentar la Moción para la Aprobación Final del Acuerdo, el
Administrador proporcionará al Abogado del Grupo y al Abogado de la Defensa, una declaración
firmada que pueda presentarse ante el Tribunal y que certifique su debida diligencia y el
cumplimiento de todas sus obligaciones conforme al presente Acuerdo, incluyendo, entre otras
cosas, el envío por correo postal de los Paquetes de Aviso, los Paquetes de Aviso devueltos por
no haberse podido entregar, el reenvío de los Paquetes de Aviso, los intentos de localizar a los
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.

1 8.8.6 Informe Final del Administrador. En un plazo de 10 días después de que el
2 Administrador haya desembolsado todos los fondos del Monto Bruto del Acuerdo, el
3 Administrador proporcionará al Abogado del Grupo y al Abogado de la Defensa un informe final
4 en el que se detallarán los desembolsos, únicamente por número de identificación de empleado,
5 de todos los pagos realizados conforme al presente Acuerdo. Al menos 15 días antes de cualquier
6 fecha límite establecida por el Tribunal, el Administrador preparará y entregará al Abogado del
7 Grupo y al Abogado de la Defensa una declaración firmada que pueda presentarse ante el
8 Tribunal y que certifique el desembolso de todos los pagos requeridos conforme al presente
9 Acuerdo. El Abogado del Grupo es responsable de presentar la declaración del Administrador
10 ante el Tribunal.

9 **9. ESTIMACIONES DEL TAMAÑO DEL GRUPO y CLÁUSULA DE AJUSTE.**

10 Basándose en sus registros, el Demandado estima que, a la fecha de este Acuerdo de Transacción,
11 (1) hay 244 Miembros del Grupo y 19,396.00 Semanas Laborales Totales durante el Período del
12 Grupo. Si las Semanas Laborales y/o los Miembros del Grupo a la fecha en que el Tribunal
13 aprueba el acuerdo superan las 19,396.00 Semanas Laborales y/o los 244 Miembros del Grupo
14 referidos en más de un 10.00%, el Monto Bruto del Acuerdo, incluyendo el Pago de Honorarios
15 del Abogado del Grupo, el Pago de Servicios del Representante del Grupo y el Pago a la LWDA,
aumentará proporcionalmente en función del número de Semanas Laborales o Miembros del
Grupo adicionales, lo que resulte en un aumento mayor del Monto Bruto del Acuerdo.

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

24 **11. MOCIÓN PARA LA APROBACIÓN FINAL.** En un plazo máximo de 16 días hábiles
25 antes de la Audiencia de Aprobación Final programada, la Demandante presentará ante el
26 Tribunal, una moción para la aprobación final del Acuerdo que incluye una solicitud de
27 aprobación del acuerdo PAGA de conformidad con la sección 2699, subdivisión (1) del Código

1 Laboral, una propuesta de la Orden de Aprobación Final y una propuesta de la Sentencia
2 (colectivamente, “Moción para la Aprobación Final”). La Demandante proporcionará
3 redacciones de estos documentos al Abogado de la Defensa antes de presentar la Moción para la
4 Aprobación Final. El Abogado del Grupo y el Abogado de la Defensa se reunirán y consultarán
5 con prontitud, en persona o por teléfono, y de buena fe, para resolver cualquier desacuerdo
relacionado con la Moción para la Aprobación Final.

6 11.1 Respuesta a las Objeciones. Cada una de las Partes se reserva el derecho de
7 responder a cualquier objeción planteada por un Miembro del Grupo Participante, incluido el
8 derecho a presentar documentos de respuesta ante el Tribunal en un plazo máximo de cinco (5)
días hábiles antes de la Audiencia de Aprobación Final, o según lo ordene o acepte el Tribunal.

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

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

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

1 13.2 Confidencialidad Previa a la Aprobación Preliminar. La Demandante, el Abogado
2 del Grupo, el Demandado y el Abogado de la Defensa acuerdan por separado que, hasta que se
3 presente la Moción para la Aprobación Preliminar del Acuerdo, ellos y cada uno de ellos no
4 divulgarán, difundirán ni publicarán, ni harán ni permitirán que otra persona divulgue, difunda o
5 publique ninguno de los términos del Acuerdo directa o indirectamente, de manera específica o
6 general, a ninguna persona, corporación, asociación, agencia gubernamental u otra entidad
7 excepto: (1) a los abogados, contables o cónyuges de las Partes, a quienes se les instruirá que
8 mantengan la confidencialidad de este Acuerdo; (2) a los abogados en un asunto relacionado; (3)
9 en la medida necesaria para informar de ingresos a las autoridades fiscales correspondientes; (4)
10 en respuesta a una orden o citación judiciales; o (5) en respuesta a una investigación o citación
11 emitida por una agencia gubernamental estatal o federal.

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

21 13.3 Prohibición de Captación. Las Partes acuerdan por separado que ellas y sus
22 respectivos abogados y empleados no captarán a ningún Miembro del Grupo que opte por
23 excluirse u oponerse al Acuerdo, ni que apele la Sentencia. Nada de lo dispuesto en este párrafo
24 se interpretará como una restricción de la capacidad de los Abogados del Grupo para comunicarse
25 con los Miembros del Grupo de conformidad con las obligaciones éticas de los Abogados del
26 Grupo tienen con los Miembros del Grupo.

27 13.4 Acuerdo Integrado. Una vez firmado por todas las Partes y sus abogados, el presente
28 Acuerdo, junto con sus anexos adjuntos, constituirá el acuerdo completo entre las Partes en
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.

 13.5 Autorización del Abogado. El Abogado del Grupo y el Abogado de la Defensa
garantizan y declaran por separado que están autorizados por la Demandante y el Demandado,
respectivamente, a tomar todas las medidas apropiadas requeridas o permitidas por dichas Partes
de conformidad con el presente Acuerdo para dar cumplimiento a sus términos, y para firmar

1 cualquier otro documento que sea razonablemente necesario para dar cumplimiento a los
2 términos del presente Acuerdo, incluidas las modificaciones al presente Acuerdo.

3 13.6 Cooperación. Las Partes y sus abogados cooperarán entre sí y harán todo lo posible,
4 de buena fe, para implementar el Acuerdo, entre otras cosas, modificando el Acuerdo de
5 Liquidación, entregando pruebas complementarias y suplementos y fundamentos legales según
6 lo solicite el Tribunal. En caso de que las Partes no puedan acordar la forma o el contenido de
7 cualquier documento necesario para implementar el Acuerdo, o sobre cualquier modificación del
8 Acuerdo que pueda ser necesaria para implementar el Acuerdo, las Partes solicitarán la asistencia
9 de un mediador y/o del Tribunal para su resolución.

10 13.7 Sin Cesiones Previas. Las Partes declaran y garantizan por separado que no han
11 cedido, transferido, gravado ni pretendido ceder, transferir o gravar directa o indirectamente a
12 ninguna persona o entidad, ninguna parte de la responsabilidad, reclamación, demanda, acción,
13 causa de acción o derecho liberado y exonerado por una de las Partes en el presente Acuerdo.

14 13.8 Sin Asesoramiento Fiscal. Ni la Demandante, ni el Abogado del Grupo, ni el
15 Demandado, ni el Abogado de la Defensa proporcionan ningún asesoramiento con respecto a
16 impuestos o tributación, ni se podrá considerar nada de lo dispuesto en este Acuerdo constituya
17 tal asesoramiento en el sentido de la Circular 230 del Departamento del Tesoro de los Estados
18 Unidos (31 CFR Parte 10, en su versión modificada) ni en ningún otro sentido.

19 13.9 Modificación del Acuerdo. El presente Acuerdo, y todas sus partes, únicamente
20 podrá ser enmendado, modificado, cambiado o renunciado mediante un instrumento expreso por
21 escrito y firmado por todas las Partes o sus representantes, y aprobado por el Tribunal.

22 13.10 Acuerdo Vinculante para los Sucesores. El presente Acuerdo será vinculante y
23 redundará en beneficio de los sucesores de cada una de las Partes.

24 13.11 Ley aplicable. Todos los términos y condiciones de este Acuerdo y sus anexos se
25 regirán e interpretarán de conformidad con las leyes internas del estado de California, sin tener
26 en cuenta los principios de conflicto de leyes.

27 13.12 Cooperación en la redacción. Las Partes han cooperado en la redacción y
28 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

1 copias y resúmenes de los Datos del Grupo proporcionados al Abogado del Grupo por el
2 Demandado en relación con la mediación, otras negociaciones de liquidación, o en relación con
3 el Acuerdo, sólo podrán utilizarse en relación con este Acuerdo, y para ningún otro propósito, y
4 no podrán utilizarse de ninguna manera que viole cualquier acuerdo contractual, estatuto o norma
5 del tribunal existentes. En un plazo máximo de 90 días después de la fecha en que el Tribunal
6 exima al Administrador de la obligación de proporcionar una Declaración que confirme el pago
7 final de todos los fondos del Acuerdo, la Demandante destruirá todas las versiones impresas y
8 electrónicas de los Datos del Grupo recibidos del Demandado a menos que, antes de que el
9 Tribunal exima al Administrador de su obligación, el Demandado solicite por escrito al Abogado
10 del Grupo la devolución, en lugar de la destrucción de los Datos del Grupo.

11 13.15 Encabezados. Los encabezados descriptivos de cualquier sección o párrafo de este
12 Acuerdo se incluyen únicamente para facilitar la referencia y no constituye parte de este Acuerdo.

13 13.16 Días naturales. A menos que se indique lo contrario, toda referencia a “días” en
14 este Acuerdo será a días naturales. En el caso de que cualquier fecha o fecha límite establecida
15 en este Acuerdo caiga en un fin de semana o día feriado legal federal, dicha fecha o fecha límite
16 será el primer día hábil posterior.

17 13.17 Notificaciones. Todas las notificaciones, requerimientos u otras comunicaciones
18 entre las Partes en relación con el presente Acuerdo se realizarán por escrito y se considerarán
19 debidamente entregadas al tercer día hábil después del envío por correo postal de los Estados
20 Unidos, o el día de su envío por correo electrónico o mensajería, dirigidas a las siguientes
21 direcciones:

22 Para la parte Demandante:
23 David Glenn Spivak, Esq.
24 The Spivak Law Firm
25 8605 Santa Monica Bl
26 PMB 42554
27 West Hollywood, CA 90069
28 david@spivaklaw.com

Para la parte Demandada:
Gordon C. Strange, Esq.
Law Offices of Gordon C. Strange
15333 Culver Drive
No. 340-223
Irvine, CA 92604
g.strange@edlapc.com

1 13.18 Firma en copias. El presente Acuerdo podrá firmarse en una o varias copias por fax,
2 electrónicamente (es decir, DocuSign) o por correo electrónico las cuales, a los efectos del
3 presente Acuerdo, se considerarán como originales. Todas las copias y cada una de ellas se
4 considerarán un único y mismo documento si los abogados de las Partes intercambian las copias
5 firmadas. Cualquier copia firmada será admisible como prueba para demostrar la existencia y el
6 contenido de este Acuerdo.

7 13.19 Suspensión del Litigio. Las Partes acuerdan que, después de firmar el presente
8 Acuerdo, se suspenderá el litigio, excepto para dar cumplimiento a los términos del presente
9 Acuerdo. Las Partes acuerdan además que, después de firmar el presente Acuerdo, que de
10 conformidad con la sección 583.330 del Código de Procedimiento Civil (CCP), se ampliará la
11 fecha para llevar el caso a juicio en virtud de la sección 583.310 del CCP durante todo el período
12 del proceso de liquidación.

13 Fecha: 03 / 09 / 2026, 2025

14 Por: M. Huerta
15 MARIA DE LA LUNA HUERTA
16 María de la Luz Huerta

17 Fecha: _____, 2025

18 Por: _____
19 Ted Salac
20 Director Financiero
21 Workforce Personnel, Inc.

22 THE SPIVAK LAW FIRM

23 Fecha: _____, 2025

24 Por: _____
25 DAVID GLENN SPIVAK, Abogado de
26 la Demandante, MARIA DE LA LUNA
27 HUERTA, y todas las demás personas
28 en situación similar

BENOWITZ LAW CORPORATION

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Fecha: _____, 2025

Por: _____
LOUIS M. BENOWITZ, Abogado de la
Demandante, MARIA DE LA LUNA
HUERTA, y todas las demás personas
en situación similar

LAW OFFICES OF GORDON C. STRANGE

Fecha: _____, 2025

Por: _____
GORDON C. STRANGE, Abogado
del Demandado, WORKFORCE
PERSONNEL, INC.

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EXHIBIT A

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

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

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

6 **You may be eligible to receive money** from an employee class action lawsuit (“Action”) against Workforce Personnel, 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 Workforce Personnel, Inc. employed at Diamond Wipes International, Inc.’s Chino location as an hourly, non-exempt employee during the Class Period of September 19, 2018 to the date of preliminary approval of this Settlement (“Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all individuals Defendant Workforce Personnel, Inc. employed at Diamond Wipes International, Inc.’s Chino location as an hourly, non-exempt employee during the PAGA Period of September 7, 2021 to the date of preliminary approval of this Settlement (“Aggrieved Employees”).

13 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”).

16 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>>.

26 The above estimates are based on Defendant’s records showing that **you worked**
27 **<<__>> 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. If you opt-out of the Settlement, you will not receive an Individual
23 Class Payment. You will, however, preserve your right to personally pursue Class Period claims
24 for California labor law violations against Defendant, and, if you are an Aggrieved Employee,
25 remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of
26 the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	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

The Opt-out Deadline is <<RESPONSE DEADLINE>>	longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiff releases Defendant from civil penalties it may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / Pay Periods Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many 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 <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.

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

1 represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm and Louis
2 M. Benowitz of Benowitz Law Corporation (“Class Counsel.”)

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

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

6 So far, the Court has made no determination whether Defendant or Plaintiff is correct on the
7 merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an
8 effort to resolve the Action by negotiating an end the case by agreement (settle the case) rather
9 than continuing the expensive and time-consuming process of litigation. The negotiations were
10 successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to
11 jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff
12 and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final
13 Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By
14 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
19 approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and
20 scheduled a hearing to determine Final Approval.

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

22 A. Gross Settlement Amount. Defendant Will Pay \$340,000.00 as the Gross
23 Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement
24 into an account controlled by the Administrator of the Settlement. The Administrator will use the
25 Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments,
26 Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the
27 Administrator’s expenses, and penalties to be paid to the California Labor and Workforce
28 Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will
fund the Gross Settlement in 24 Installment Payments. Defendant will deposit the first Installment
Payment of \$14,166.66 of the Gross Settlement into an account controlled by the Administrator
of the Settlement within 14 days of the Court granting Final Approval. Thereafter, Defendant will
make 23 monthly contributions to the account controlled by the Administrator 4. The next 22
Installment Payments will also be in the amount of \$14,166.66. the last Installment Payment will
be in the amount of \$ 14,166.82. Defendant will make each of the next 23 payments every 30
days thereafter. Defendant will also fund the amounts necessary to fully pay Defendant’s share
of payroll taxes by transmitting the funds to the Administrator for each distribution. The Judgment

1 will be final on the date the Court enters Judgment, or a later date if Participating Class Members
2 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 \$113,333.33 (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 Award. 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 \$12,000.00 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 the date of the Settlement, there are
22 244 Class Members and 19,396.00 total Work Weeks during the Class period. If the Work Weeks
23 and/or Class Members as of the date the Court approves the Settlement exceeds the referenced
24 19,396.00 Work Weeks and/or 244 Class Members by more than 10.00%, the Gross Settlement
25 Amount, including the Class Counsel Fees Payment, the Class Representative Service Payment,
26 and the LWDA payment, will increase proportionally according to the number of additional Work
27 Weeks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

28 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.

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

1 PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
2 Forms.

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

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

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

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

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

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

H. Administrator. The Court has appointed a neutral company, Apex Class Action
(the "Administrator") to send this Notice, calculate and make payments, and process Class
Members' Requests for Exclusion. The Administrator will also decide Class Member disputes
over Work Weeks, mail and re-mail settlement checks and tax forms, and perform other tasks

1 necessary to administer the Settlement. The Administrator's contact information is contained in
2 Section 9 of this Notice.

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

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

8 All Participating Class Members, on behalf of themselves and their respective
9 former and present representatives, agents, attorneys, heirs, administrators,
10 successors, and assigns, release Released Parties from all claims stated in the
Operative Complaint and those based solely upon the facts alleged in the Operative
11 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
12 Participating Class Members do not release any other claims, including claims for
vested benefits, wrongful termination, violation of the Fair Employment and
13 Housing Act, unemployment insurance, disability, social security, workers'
compensation, or claims based on facts occurring outside the Class Period.
14 "Released Parties" does not include Diamond Wipes International Inc. or any of
its officers, directors, employees or agents.

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

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

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

23 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
24 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
25 by each individual Aggrieved Employee.

26 C. Workweek/Pay Period Challenges. The number of Class Work Weeks you worked
27 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA

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

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

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

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

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

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

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

26 Email, fax, or mail a written and signed letter with your name, present address, telephone
27 number, and a simple statement that you do not want to participate in the Settlement. You may
28 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.

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

2 Only Participating Class Members have the right to object to the Settlement. Before deciding
3 whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to
4 approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will
5 file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why
6 the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Class
7 Representative Service Payment stating (i) the amount Class Counsel is requesting for attorneys'
8 fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative
9 Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section
10 9 of this Notice) will send you copies of these documents at no cost to you. You can also view
11 them and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR
12 WEBSITE>> or the Court's website <<COURT WEBSITE>>.

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

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

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

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

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

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

4 The Agreement sets forth everything Defendant and Plaintiff have promised to do under the
5 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
6 Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE
7 NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator
8 using the contact information listed below, or consult the Superior Court website by going to
9 (<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>>.

10 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT 11 THE SETTLEMENT.**

12 Class Counsel:

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

18 Administrator:

19 Name of Company: Apex Class Action
20 Email Address: _____
21 Mailing Address: _____
Telephone: _____
Fax Number: _____

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

23 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
24 as long as you request a replacement before the void date on the face of the original check. If
25 your check is already void, you should consult the Unclaimed Property Fund
26 (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can
27 contact the Unclaimed Property Fund at (800) 992-4647.
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1 **11. WHAT IF I CHANGE MY ADDRESS?**

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

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**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.**

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

(Typed or Printed Name)

(City, State, Zip Code)

(Identification Number)

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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 September 19, 2018 and <<the date the Court preliminarily approves
12 this class action settlement>> and eligible PAGA Pay Periods you worked between September
13 7, 2021 and <<the date the Court preliminarily approves this class action settlement>>. “Work
14 Week” means any week during which a Class Member worked for Defendant or any other
15 Released Party for at least one day, during the Class Period. “PAGA Pay Period” means any Pay
16 Period during which an Aggrieved Employee worked for Defendant or any other Released Party
17 for at least one day during the PAGA Period. The number of Work Weeks and PAGA Pay Periods
18 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 September 19, 2018 and <<the date the Court preliminarily approves this class action
22 settlement>> and <<number of PAGA Pay Periods>> PAGA Pay Periods between September 7,
23 2021 through <<the date the Court preliminarily approves this class action settlement>>.

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

25 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment
26 in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable
27 payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This
28 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

1 forth above is incorrect. The Administrator will resolve any dispute based upon Defendant's
2 records and any information you provide. Please be advised that the information on this Work
3 Weeks/PAGA Pay Periods Dispute Form is presumed to be correct unless the documents you
submit are company records from Defendant.

6 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK**
7 **WEEKS OR PAGA PAY PERIODS, RECEIPT OF A SETTLEMENT PAYMENT, OR**
8 **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):

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

Executed on _____, 2023

(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
[ADDRESS]

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EXHIBIT E

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

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

16 *Plaintiff(s),*

17 vs.

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

21 *Defendant(s).*
22
23
24

Case No. CIVSB2220822

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

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

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

1 Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement
2 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

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

12 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
13 all individuals Defendant Workforce Personnel, Inc. (“Defendant”) employed at Diamond Wipes
14 International, Inc.’s Chino location as an hourly, non-exempt employee during the Class Period
15 (collectively “Class Members”). The “Class Period” shall mean the period of time from
16 September 19, 2018, through the date of preliminary approval of this Settlement.
17

18 3. Based on its records, Defendant estimates that, as of the date of the Settlement
19 Agreement, (1) there are 244 Class Members and 19,396.00 Total Work Weeks during the Class
20 period. If the Work Weeks and/or Class Members as of the date the Court approves the settlement
21 exceeds the referenced 19,396.00 Work Weeks and/or 244 Class Members by more than 10.00%,
22 the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class
23 Representative Service Payment, and the LWDA payment, will increase proportionally according
24 to the number of additional Work Weeks or Class Members, whichever results in a higher increase
25 in the Gross Settlement Amount.
26
27

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 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

1 Administrator shall notify Class Counsel that the list has been received and state the number of
2 Class Members, Aggrieved Employees, Work Weeks, and PAGA Pay Periods in the Class Data.

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

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

21 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law
22 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s
23 contact information is Gordon C. Strange, Esq., Law Offices of Gordon C. Strange, 15333 Culver
24 Drive, No. 340-223, Irvine, CA 92604.
25

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

5
6 12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
7 discovers any persons who believe they should have been included in the Class Data and should
8 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
9 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
10 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
11 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
12 requiring them to exercise options under the Settlement Agreement not later than 14 days after
13 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

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

25
26 14. The Administrator may not reject a Request for Exclusion as invalid because it
27

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

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

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

24 17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days
25 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
26 whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and/or PAGA
27

1 Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a
2 dispute. A Work Week Dispute form, attached as Exhibit C to the Settlement Agreement, may
3 be used for this purpose but is not required. The Class Member may challenge the allocation by
4 communicating with the Administrator via fax, email or mail. The Administrator must encourage
5 the challenging Class Member to submit supporting documentation. In the absence of any
6 contrary documentation, the Administrator is entitled to presume that the Work Weeks contained
7 in the Class Notice are correct so long as they are consistent with the Class Data. The
8 Administrator's determination of each Class Member's allocation of Work Weeks and/or PAGA
9 Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The
10 Administrator shall promptly provide copies of all challenges to calculation of Work Weeks
11 and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's
12 determination the challenges.

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

19 19. Participating Class Members may send written objections to the Administrator, by
20 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
21 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
22 Participating Class Member who elects to send a written objection to the Administrator must do
23 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
24 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
25 to the Settlement Agreement as Exhibit D may be used for this purpose but is not required.
26
27

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

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

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

23. The Court approves, for settlement purposes only, David Glenn Spivak of The 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

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

2 **IT IS SO ORDERED.**

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4
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’s Motion for Final Approval of a Class Action Settlement pursuant
26 to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action
27 Settlement and Release of Claims (the “Settlement”) filed herewith which provides for a Gross
28 Settlement Amount (“GSA”) of up to \$340,000.00 in compromise of all disputed claims on behalf

1 of all individuals Defendant Workforce Personnel, Inc. (“Defendant”) employed at Diamond
2 Wipes International, Inc.’s Chino location as an hourly, non-exempt employee during the Class
3 Period of September 19, 2018 to the date of preliminary approval of this Settlement. All
4 capitalized terms used herein shall have the same meaning as defined in the Settlement.

5 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
6 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
7 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
8 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
9 and the evidence and argument received by the Court in conjunction with the motions for
10 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
11 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
12 DETERMINATIONS¹:
13

14
15 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
16 to the Action, including all Class Members. Pursuant to this Court’s Order Granting Preliminary
17 Approval of Class Action Settlement of ____, the Notice Packet was sent to each Class Member
18 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
19 Settlement, their right to receive their proportional share of the Settlement, their right to request
20 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
21 person or by counsel at the final approval hearing and be heard regarding final approval of the
22 Settlement. Adequate periods of time were provided by each of these procedures. No member of
23 the Settlement Class presented written objections to the proposed Settlement as part of this notice
24

25
26
27 ¹ 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 process, stated an intention to appear, or actually appeared at the final approval hearing.

2 2. For purposes of this Final Order and Judgment, the Class Members are all
3 individuals Defendant Workforce Personnel, Inc. employed at Diamond Wipes International,
4 Inc.'s Chino location as an hourly, non-exempt employee during the Class Period of September
5 19, 2018 to the date of preliminary approval of this Settlement.
6

7 3. The Court finds and determines that the notice procedure afforded adequate
8 protections to Class Members and provides the basis for the Court to make an informed decision
9 regarding final approval of the Settlement based on the responses of Class Members. The Court
10 finds and determines that the notice provided in this case was the best notice practicable, which
11 satisfied the requirements of law and due process as to all persons entitled to such notice.
12

13 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
14 resolution set forth in this Settlement will release and discharge the Released Claims by way of
15 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
16 of any kind by each and all of the Settlement Class Members (including participation to any extent
17 in any representative or collective action) against the Released Parties. This release will not take
18 effect until Defendant has paid the Gross Settlement Amount in full per this Settlement
19 Agreement.
20

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

25 **"Released Claims"** shall mean all claims stated in the Operative Complaint and based
26 solely on the facts alleged in the Operative Complaint. **"Released Parties"** shall mean Defendant,
27

its officers, directors, employees and agents. “Released Parties” does not include Diamond Wipes International Inc. or any of its officers, directors, employees or agents.

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

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

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

a. Class Counsel fees & costs of \$113,333.33 in attorneys' fees and

1 \$ _____ in litigation costs to Class Counsel;

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

4 c. \$12,000.00 in costs of the Administrator payable to Apex Class Action for
5 its services as the Administrator; and

6 d. Payment of \$3,750.00 (75% of the \$5,000.00 PAGA Penalties) to the
7 LWDA.
8

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

16 8. Defendant shall deposit the first Installment Payment of \$14,166.66 of the Gross
17 Settlement into an account controlled by the Administrator of the Settlement within 14 days of
18 this Final Order and Judgment. Thereafter, Defendant shall make 23 monthly contributions to the
19 account controlled by the Administrator 4. The next 22 Installment Payments shall also be in the
20 amount of \$14,166.66. the last Installment Payment shall be in the amount of \$ 14,166.82.
21 Defendant shall make each of the next 23 payments every 30 days thereafter. Defendant shall also
22 fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the
23 funds to the Administrator for each distribution.
24

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

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

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

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

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

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

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

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

24 16. The Settlement is not an admission by Defendant nor is this Final Order and
25 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendant.
26 Furthermore, the Settlement is not a concession by Defendant and shall not be used as an
27

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

13 17. This document shall constitute a Judgment for purposes of California Rule of
14 Court 3.769(h).
15

16 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
17
18

19 _____
20 **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 (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. 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
7349 MILLIKEN AVE
#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

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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



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BY FAX

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 (7th) consecutive day of work in a workweek;
- (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. 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>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Wed, Sep 7, 2022 at 4:07 PM

To: "stacy.aguirre@spivaklaw.com" <stacy.aguirre@spivaklaw.com>

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.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: 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 (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. 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
7349 MILLIKEN AVE
#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



Stacy Aguirre <stacy.aguirre@spivaklaw.com>

Thank you for your Amended PAGA Claim Notice Submission.

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: 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.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: 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 (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. 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,

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cc: Margarita Perez
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EXHIBIT 4

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COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 19 2022

BY Mayela Martinez
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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 (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. 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.

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



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

26 Wage Order, § 9(A) and (B).

27 79. California Labor Code § 1198 prohibits employers from employing their
28 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 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 (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. 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)).

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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.

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c/o Alfred Landegger, Esq.
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EXHIBIT 6



Sample size calculator

What margin of error can you accept?

5% is a common choice

14 %

The margin of error is the amount of error that you can tolerate. If 90% of respondents answer *yes*, while 10% answer *no*, you may be able to tolerate a larger amount of error than if the respondents are split 50-50 or 45-55.

Lower margin of error requires a larger sample size.

What confidence level do you need?

Typical choices are 90%, 95%, or 99%

95 %

The confidence level is the amount of uncertainty you can tolerate. Suppose that you have 20 yes-no questions in your survey. With a confidence level of 95%, you would expect that for one of the questions (1 in 20), the percentage of people who answer *yes* would be more than the margin of error away from the true answer. The true answer is the percentage you would get if you exhaustively interviewed everyone.

Higher confidence level requires a larger sample size.

What is the population size?

If you don't know, use 20000

244

How many people are there to choose your random sample from? The sample size doesn't change much for populations larger than 20,000.

What is the response distribution?

Leave this as 50%

50 %

For each question, what do you expect the results will be? If the sample is skewed highly one way or the other, the population probably is, too. If you don't know, use 50%, which gives the largest sample size. See below under **More information** if this is confusing.

Your recommended sample size is

41

This is the minimum recommended size of your survey. If you create a sample of this many people and get responses from everyone, you're more likely to get a correct answer than you would from a large sample where only a small percentage of the sample responds to your survey.

Online surveys with **Vovici** have completion rates of **66%!**

Alternate scenarios

With a sample size of	100	200	300	With a confidence level of	90	95	99
Your margin of error would be	7.54%	2.95%	0.00%	Your sample size would need to be	31	41	64

Save effort, save time. **Conduct your survey online with Vovici.**

More information

If 50% of all the people in a population of 20000 people drink coffee in the morning, and if you were repeat the survey of 377 people ("Did you drink coffee this morning?") many times, then 95% of the time, your survey would find that between 45% and 55% of the people in your sample answered "Yes".

The remaining 5% of the time, or for 1 in 20 survey questions, you would expect the survey response to more than the margin of error away from the true answer.

When you survey a sample of the population, you don't know that you've found the correct answer, but you do know that there's a 95% chance that you're within the margin of error of the correct answer.

Try changing your sample size and watch what happens to the *alternate scenarios*. That tells you what happens if you don't use the recommended sample size, and how M.O.E and confidence level (that 95%) are related.

To learn more if you're a beginner, read **Basic Statistics: A Modern Approach** and **The Cartoon Guide to Statistics**. Otherwise, look at the **more advanced books**.

In terms of the numbers you selected above, the sample size n and margin of error E are given by

$$x = Z(c/100)^2 r(100-r)$$

$$n = N x / ((N-1)E^2 + x)$$

$$E = \text{Sqrt}[(N - n)x / n(N-1)]$$

where N is the population size, r is the fraction of responses that you are interested in, and $Z(c/100)$ is the critical value for the confidence level c .

If you'd like to see how we perform the calculation, view the page source. This calculation is based on the [Normal distribution](#), and assumes you have more than about 30 samples.

About **Response distribution**: If you ask a random sample of 10 people if they like donuts, and 9 of them say, "Yes", then the prediction that you make about the general population is different than it would be if 5 had said, "Yes", and 5 had said, "No". Setting the response distribution to 50% is the most conservative assumption. So just leave it at 50% unless you know what you're doing. The sample size calculator computes the critical value for the normal distribution. Wikipedia has good articles on statistics.

How do you like this web page? ☐ Good as-is ☐ Could be even better

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Print

Done

EXHIBIT 7

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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
19 vs.

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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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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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 (7th) consecutive day of work in a workweek;
- (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. 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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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.

68. 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.

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

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



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

3 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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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)



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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
25 Evelyn@landeggeresq.com
26 arthur@landeggeresq.com
27 joseph@landeggeresq.com
28 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

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 8

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., 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:
Lab.Code § 203 (waiting time penalties) period begins:
Lab.Code § 2699 (civil penalties) period begins:
Lab.Code § 226 (pay stub penalties) period begins:
LWDA Notice:
Lawsuit:
Sample begin:
Sample end:
Sample calendar days:
Mediation:
Anticipated Settlement Period end date:
Settlement Period to Sample Period:

Classes / Groups sizes

UCL Class Members:
UCL Workweeks:
UCL Wage Statements:
UCL Workdays:
UCL Calendar days:
UCL Months:

Waiting Time Penalties Class Members:

PAGA Aggrieved Employees:
PAGA Wage Statements:

Wage Statement Class Members:
Wage Statement Class Wage Statements:

Averages

Average Hourly Rate:
Average Overtime Rate:
Average Doubletime Rate:

Average Work Hours Per Day:
Average Work Hours Per Week:
Average Workdays Per Week:
Workdays to Calendar Days (%):
Paycycle:
Paychecks Per Year:

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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:
Average Overtime Rate:
Unpaid hours per work day:
Actionable workdays:
Interest:

Unpaid off-the-clock wages

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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 wages due to time shaving:
Authority:	Lab.Code §§ 510, 1194, and 1198

Average Hourly Rate:
Average Overtime Rate:
% of workdays with negative time shaving:
Average hours shaved per workday:
UCL Workweeks:
Interest rate:

Unpaid wages due to time shaving:

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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:

Actionable workdays:

>>Percentage qualifying for meal periods:

Violation rate (%)

Meal period premium wages:

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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:
Actionable workdays:
>>Percentage qualifying for rest periods:
Violation rate (%)

Rest period premium wages:

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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 including goggles per employee:

UCL Class Members:

Interest rate:

Unreimbursed expenses:

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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:

Wage Statement Class Wage Statements:

Initial penalty:

Subsequent penalty:

Statutory wage statement penalties:

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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:

Days waiting:

Average Hourly Rate:

Average Overtime Rate:

Average Doubletime Rate:

Average Work Hours Per Day:

Regular Hours Per Day:

Overtime Hours Per Day:

Doubletime Hours Per Day:

Waiting time penalties:

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: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil		Initial penalty	Pay periods
	Penalty Statute			
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$	100.00	12,974
Overtime wages/M meal Periods (Lab.Code §§ 510/51	Lab.Code § 558	\$	50.00	12,974
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$	100.00	12,974
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$	100.00	12,974
Improper pay stubs (Lab.Code § 226):	Lab.Code § 2699	\$	100.00	12,974
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$	100.00	12,974
Total:				

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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: **Totals**
Authority: Various

Restitution		Risk Reduction
Unpaid off-the-clock wages	\$ 2,601,283.26	80%
Unpaid wages due to time shaving:	\$ 47,364.17	80%
Meal period premium wages:	\$ 3,092,531.66	80%
Rest period premium wages:	\$ 3,153,070.62	80%
Unreimbursed expenses:	\$ 13,530.00	80%
Restitution subtotal:	\$ 8,907,779.71	
Penalties		
Statutory wage statement penalties:	\$ 1,264,900.00	80%
Waiting time penalties:	\$ 911,534.36	80%
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 1,297,400.00	80%
Overtime wages/M meal Periods (Lab.Code §§ 510/512):civil penalties:	\$ 648,700.00	100%
Rest periods (Lab.Code § 1198):civil penalties:	\$ 1,297,400.00	100%
Business expenses (Lab.Code § 2802):civil penalties:	\$ 1,297,400.00	100%
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 1,297,400.00	100%
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 1,297,400.00	100%
Penalties subtotal:	\$ 9,312,134.36	
Grand total:	\$ 18,219,914.08	

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Wednesday, September 19, 2018
 Thursday, September 19, 2019
 Tuesday, September 7, 2021
 Sunday, September 19, 2021
 Wednesday, September 7, 2022
 Monday, September 19, 2022
 Wednesday, September 19, 2018
 Friday, February 21, 2025
 2,347
 Wednesday, March 19, 2025
 Thursday, July 17, 2025
 106.22%

246
 19,396
 19,396
 135,093
 2,373
 4463.98

234

244
 12,974

244
 12,771

\$ 15.56
 \$ 23.34
 \$ 31.12

8.23
 37.41
 4.54
 64.86%
 weekly (52 paychecks/year)
 52

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\$	15.56
\$	23.34
	0.75
	135,093
	10%
\$	2,601,283.26

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\$	15.56
\$	23.34
	17.07%
	0.08
	135,093.00
	10%
\$	47,364.17

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\$	23.34
	135,093
	98.08%
	100.00%
\$	3,092,531.66

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\$	23.34
	135,093
	99.20%
	100.00%
\$	3,153,070.62

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\$	50.00
	246
	10%
\$	13,530.00

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	244
	12,771
\$	50.00
\$	100.00
\$	
	1,264,900.00

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	234
	30
\$	15.56
\$	23.34
\$	31.12
	8.23
	8.00
	0.23
	-
\$	911,534.36

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Total	
\$	1,297,400.00
\$	648,700.00
\$	1,297,400.00
\$	1,297,400.00
\$	1,297,400.00
\$	1,297,400.00
\$	7,135,700.00

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Settlement Value	
\$	520,256.65
\$	9,472.83
\$	618,506.33
\$	630,614.12
\$	2,706.00
\$	1,781,555.94

\$	252,980.00
\$	182,306.87
\$	259,480.00
\$	-
\$	-
\$	-
\$	-
\$	-
\$	694,766.87
\$	2,476,322.82

EXHIBIT 9

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
3 9454 Wilshire Blvd.
4 Suite 303
5 Beverly Hills, CA 90212
6 Telephone (310) 499-4730
7 Facsimile (310) 499-4739
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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 THE
27 SPIVAK
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

8 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

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

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

1 23. California Labor Code § 510(a) also requires employers to compensate
2 employees at two times their regular rates of pay for:

3 A. All hours worked in excess of twelve hours in one day; and,

4 B. All hours worked in excess of eight hours on a seventh consecutive
5 workday during a workweek.

6 24. During the applicable limitations period, Plaintiffs have worked more than eight
7 hours in one workday, more than forty hours in one workweek, and eight or more hours on a
8 seventh consecutive workday without being paid for all of those hours at the rates required
9 under California Labor Code § 510(a).

10 25. Plaintiffs are informed and believe and thereon allege that Defendants have
11 maintained a policy or practice of not compensating him and the other members of the **Wages**
12 **Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege
13 that Defendants have maintained a policy or practice of not compensating the other members of
14 the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code §
15 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of
16 forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked
17 hours in excess of eight hours on a seventh consecutive workday.

18 26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the
19 other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive
20 relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable
21 attorney's fees pursuant to California Labor Code § 1194(a).

22 **SECOND CLAIM FOR RELIEF**

23 **FAILURE TO PROVIDE REST AND MEAL PERIODS**

24 **(By Plaintiffs, the Rest Period Class, and the Meal Period Class)**

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

27 28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and
Meal Period Class have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

16 C. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
18 employee for each subsequent violation (penalty amounts established by California Labor Code
19 § 226.3); and,

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24
25 ///

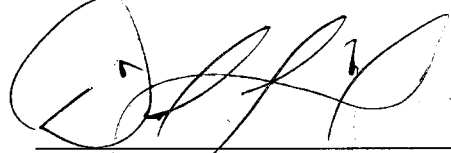
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- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM



By:

Date: February 23, 2010

DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 10

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 11



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

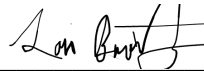
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DECLARACIÓN DE LOS DERECHOS DEL CLIENTE POR CONCEPTO DE HONORARIOS DE CONTINGENCIA

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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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](#).¹

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

FACTS²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a “residual bonus.” A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus. Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees \$0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from \$455 to \$35,719. The court awarded plaintiffs’ counsel attorney fees of \$881,715. The court rejected plaintiffs’ claim under PAGA for lack of standing, because plaintiffs left defendants’ employ before PAGA took effect in 2004.

*2 Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court’s award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court’s award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs “could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees.”

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court’s award of \$881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.³

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of \$307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants’ July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for \$2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs’ request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants’ view, the “catalyst” theory is inapposite because no public interest was vindicated by plaintiffs’ lawsuit.

THE TRIAL COURT’S RULING

*3 The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the prevailing parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings; these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of \$346,947.

DISCUSSION

1. Appeal and Review

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not prevail on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. Overview of § 218.5

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or employers, whichever is the prevailing party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. The Catalyst Theory

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.⁴ It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

*4 The doctrine "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." (*Graham, supra*, 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation.” (*Graham, supra*, 34 Cal.4th at pp. 560–561.)

“ ‘A plaintiff will be considered a “successful party” where an important right is vindicated “by activating defendants to modify their behavior.” ’ ” (*Graham, supra*, 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham*, the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, “implicated an issue of public safety, and [] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards.” (*Id.* at pp. 577–578.)

4. Plaintiffs’ Right to Recover Attorney Fees

Plaintiffs originally brought suit in 2004 “on behalf of themselves and the general public.” They requested attorney fees pursuant to § 218.5. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the prevailing party under § 218.5, we import the definition used in the Code of Civil Procedure (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a prevailing party as “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (Code Civ. Proc., § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § 218.5, plaintiffs were not the prevailing party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § 218.5, plaintiffs argue that the theory should apply, based on defendants’ July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § 218.5, which mandates an award of attorney fees to the “prevailing party.” Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

*5 The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants’ 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts “not only to determine the lawsuit’s catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit.” (*Graham, supra*, 34 Cal.4th at p. 576.) Plaintiffs cannot be a “successful party” if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs’ lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra*, 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year’s end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the “catalyst” theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor’s constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a \$1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit “ ‘that genuinely provide[d] a public benefit.’ ” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. Defendants’ Right to Recover Attorney Fees

Section 218.5 is a reciprocal attorney fees statute that requires an award of fees to the “prevailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 218.5 when they filed suit. Defendants were the prevailing parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [prevailing party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not prevail on any claims.

*6 Plaintiffs contend that their claims for fees under § 218.5 were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the prevailing party under § 218.5. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § 218.5 lists only one remotely pertinent exception: “This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.”⁵ Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who prevail on their minimum wage or overtime compensation claims.

Section 218.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the employer to become the prevailing party in the litigation. Defendants are the prevailing party under § 218.5, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.⁶

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the prevailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 218.5 will be referred to in this opinion as § 218.5.

² The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

³ Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount plaintiffs are entitled to

reasonable fees for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- * Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

EXHIBIT 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.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was "owed wages" and was "owed for accrued paid time off," and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu's "conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment." In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and "reasonable attorney's fees, pursuant to [Labor Code Section 218.5](#)." Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not **prevail** on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the **prevailing** party, was eligible to recover its reasonable attorney fees and costs.²

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the **prevailing** party and entitled to recover its fees and costs under [Labor Code section 218.5](#). Café Tiramisu requested \$36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

*2 Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under [Labor Code section 218.5](#), which authorizes recovery by the **prevailing** party, because her action was for overtime wages governed by [Labor Code section 1194](#), which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of \$36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) [Labor Code section 218.5](#) was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. Recovery of Attorney Fees Under [Labor Code Section 218.5](#)

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to [Labor Code section 218.5](#).³ [Section 218.5](#) provides in pertinent part: "In any action brought for the *nonpayment of wages*, fringe benefits, or health and welfare or pension fund contributions, the court *shall* award reasonable attorney's fees and costs to the **prevailing** party if any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of [section 218.5](#) was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to [Labor Code \[sections\] 226.7 and 227.3](#)." [Section 226.7](#) refers to pay for time worked during mandated meal periods, and [section 227.3](#) refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the **prevailing** party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. ([Code Civ. Proc. § 1032, subd. \(a\)\(4\)](#).)

Third, Maria expressly requested attorney fees and costs pursuant to [section 218.5](#) upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees*, and costs of suit." (Italics added.)

*3 Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the **prevailing** party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.⁴

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled*. Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages*, constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

*4 Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the **prevailing** party to recover attorney fees. (*Earley*, at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: “The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars employers from relying on section 218.5 to recover fees in any action for *minimum* wages or *overtime* compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for ‘wages, fringe benefits, or health and welfare or pension fund contributions.’ [Footnote omitted.]” (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley*, *supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.⁵

B. Apportionment Among Causes of Action

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its “refusal to pay [her] wages owed.” As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria “wages.”

*5 Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. Apportionment as to Other Plaintiffs

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the “deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases.” She also states: “respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court.”

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: [SIMONS](#), Acting P.J., and [BRUINIERS](#), J.

Footnotes

- ¹ The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.
- ² Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under [Labor Code section 206.5](#). In August 2011, we affirmed the judgment.
- ³ Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- ⁴ Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "
- ⁵ It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

EXHIBIT 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 Healthcare¹ (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. ([Code Civ. Proc.](#), §§ 473, 1008.) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. ([Lab.Code](#), § 218.5.) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

FACTUAL AND PROCEDURAL SUMMARY

In March 1996, Sharp hired Csaszi as a utilization review/quality assurance nurse responsible for evaluating patients for discharge at Tri-City Medical Center. Two and one-half years later, Csaszi's supervisors readjusted the workloads of Csaszi and a co-worker. Csaszi was unhappy about the change in her assignment, and complained about what she believed was unfair treatment. In March 1999, Csaszi was given several written notices regarding perceived problems with her performance and the need to improve to avoid being terminated. Two months later, in May 1999, Sharp terminated Csaszi, stating she had failed to properly perform her job assignments and acted in an improper manner toward other health care employees.

In December 1999, Csaszi filed a complaint against Sharp, alleging (1) employment discrimination claims (wrongful termination in violation of public policy, unlawful discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), and wrongful demotion in retaliation for complaining about racial discrimination); and (2) a claim for the failure to properly pay "on-call" wages in violation of [Labor Code section 201](#).

Sharp moved for summary adjudication on Csaszi's discrimination claims on the grounds that Csaszi could not establish she was performing her job in a satisfactory manner, Sharp had legitimate, nondiscriminatory reasons for terminating Csaszi, and Csaszi had no evidence that Sharp's stated reasons were a pretext for unlawful discrimination. Csaszi's attorney, Michael W. Loker, did not file an opposition to that motion, even though (as detailed below) Loker told Csaszi that he *had* filed an opposition.

On November 22, 2000, the court granted Sharp's summary adjudication motion, ruling that Sharp met its burden to establish a legitimate reason for Csaszi's termination and Csaszi failed to present any evidence that the proffered reason for the termination was untrue or pretextual.

***2** On the date scheduled for trial on her remaining claim, Csaszi appeared with attorney Loker, and informed the trial court that she wished to terminate Loker. The trial court granted the request and, over Sharp's objections, granted Csaszi's request for a 90-day trial continuance.

On December 14, 2000, Csaszi, represented by new counsel William Evans, filed a [Code of Civil Procedure section 1008](#) motion ([section 1008](#)), requesting the court to reconsider its summary adjudication ruling. The court denied the motion, finding the motion was not timely (it was filed more than 10 days after the summary adjudication order was entered) and Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion.

On March 9, 2001, a court trial began on Csaszi's remaining claim for unpaid wages relating to her on-call time. After considering all the evidence (which will be detailed below), the court found Csaszi failed to meet her burden to show she was entitled to unpaid wages for her on-call time.

The next month, on April 6, 2001, Csaszi moved for relief from the summary adjudication order under [Code of Civil Procedure section 473](#) ([section 473](#)). In support, Csaszi submitted her declaration, the declaration of her former attorney (Loker), and proposed responsive papers to Sharp's summary adjudication motion. The court denied the [section 473](#) motion, stating Csaszi "made no showing that a judgment, dismissal, order, or other proceeding has been taken against her as a result of her or her attorney's mistake, inadvertence, surprise, or excusable neglect, as is required by the section."

Sharp then moved for its attorney fees as the prevailing party on the FEHA and unpaid wage claims. The court initially granted the motion on both grounds, but after oral argument, concluded that Csaszi's "discrimination case was not totally groundless" and therefore awarded only those fees pertaining to the unpaid wage claim (\$20,269) based on [Labor Code section 218.5](#).

On appeal, Csaszi challenges the denial of her motions to vacate the summary adjudication and the court's rulings pertaining to the unpaid wage claim.

DISCUSSION

I. Motion for Reconsideration

Csaszi first contends the court abused its discretion in denying her motion to reconsider the summary adjudication order under [section 1008](#), which permits a court to revoke a previous order based on new or different facts and an adequate justification for the failure to previously produce those facts. The contention is unavailing.

^[1] First, the motion was untimely. [Section 1008](#) requires that a reconsideration motion be brought “within 10 days after service upon the party of written notice of entry of the order...” (See *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310.) Sharp served written notice of entry of the order on November 22, 2000, and Csaszi filed her reconsideration motion 22 days later, on December 14, 2000.

*3 ^[2] Additionally, the trial court properly denied the motion on the basis that Csaszi “fail[ed] to set forth any ‘new or different facts, circumstances, or law’ that would affect the outcome of” the summary adjudication motion. Csaszi did not proffer any new facts or law relevant to the summary adjudication ruling. Instead, she focused exclusively on explaining the circumstances of her prior attorney’s failure to adequately represent her. These circumstances do not constitute the type of “new or different facts” that permit a reconsideration of the trial court’s order under [section 1008](#).

II. Section 473 Ruling

Csaszi alternatively contends the trial court erred in denying her [section 473](#) motion seeking to vacate the summary adjudication order because of her attorney’s neglect.

A. Relevant Facts

In moving for relief under [section 473](#), Csaszi requested the trial court to vacate the summary adjudication order because the motion was granted without the benefit of her opposition papers and the failure to file an opposition was caused by her attorney’s misconduct. In support, she submitted her own declaration and copies of facsimiles (faxes) received from attorney Loker, which set forth the following facts:

Csaszi retained Loker in September 1999. Loker thereafter filed the complaint and, in April 2000, “began discovery requests.” In May 2000, Loker notified Csaszi he had attended a case management conference, and the trial date was scheduled for October 20, 2000. During the next two months, Csaszi made numerous attempts to contact Loker, but Loker did not return any of Csaszi’s telephone calls or respond to her written correspondence. In August 2000, Csaszi’s husband went to the superior court and discovered that Sharp had obtained a continuance of the trial to December 1, 2000.

On September 7, 2000, Loker called Csaszi and told her Sharp wanted to take her deposition. Csaszi expressed her concern about being unable to contact Loker, but Loker did not explain why he failed to respond to her calls and letters, and said only that he now intended to “move” on Csaszi’s case. Csaszi thereafter met with Loker on two separate days to prepare for her deposition. Sharp deposed Csaszi on three different dates, and each time Loker was present to represent her.

On October 12, Sharp filed its summary adjudication motion, but Loker did not tell Csaszi of this filing. Loker thereafter scheduled depositions of three Sharp employees, but these depositions were postponed for unspecified reasons and later rescheduled to October 30. On October 26, Csaszi met with Loker to review her deposition transcript, and she also gave Loker \$1,000 to pay for the three upcoming Sharp employee depositions. On that date, Loker also informed Csaszi about Sharp’s summary adjudication motion for the first time. Loker told her he would be filing an opposition to the summary judgment motion, but did not tell her the opposition was due on October 26.

*4 On October 30, Csaszi met with Loker to determine why the Sharp employees’ depositions were cancelled that morning. During that meeting Loker did not tell Csaszi that he had filed an ex parte application to continue the hearing on the summary judgment motion.

Ten days later, on November 9, Loker faxed Csaszi a note stating that he was in the library and that he would:

“[F]ile our response in opposition to the summary judgment today and argument is on [November] 17th, for which you will be present. Contrary to my message yesterday, I do not need your signature at this time, but I do need to see you Saturday, and I need you to drop off today the filing fee for the opposition to the Summary Judgment, payable to the Clerk of the Superior Court, in the amount of \$116. Also, the copies of your deposition are payable at this time, because I am using them in our opposition, in the amount of \$615.46, which should be by separate check, made payable to this office.... Therefore, though I need not, and cannot meet today (*because of the fact that I am in the law library today all day working on the opposition*), please drop off two drafts for the filing fee and deposition copy fee, in the amounts noted respectively. Also please leave a time in which we may meet Saturday, if you are not otherwise occupied. *I am optimistic.*” (Italics added.)

Csaszi thereafter wrote the requested checks, but Loker was not in his office when she delivered them. Csaszi telephoned Loker on a daily basis for the next eight days, but was unable to reach him and Loker did not respond to these calls. In the early morning of November 17 (the date scheduled for oral argument on the summary adjudication motion), Csaszi received a fax from Loker stating:

“The court announced yesterday that it will review the briefs submitted and rule telephonically on 22 Dec. (on the summary judgment). *I will fax you our opposition if you haven’t received.* Therefore there are no hearings today. P.S. *There was no charge for filing the opposition, a rule change.* You may ‘void’ that check, which I will destroy. Tx.” (Italics added.)

In fact, Loker never filed an opposition. Further, the applicable rules have never required a party opposing a summary judgment to pay a fee. (See Super. Ct. San Diego County, Fee Schedule & Forms List.)

In response to this fax, Csaszi repeatedly attempted to contact Loker, but was unable to reach him. Csaszi then directly contacted the superior court, and learned from the court that a trial call on her remaining claim was scheduled for December 1, 2000. The morning of December 1, Loker faxed Csaszi a note stating there was no hearing and that he intended to meet with her during the weekend to discuss the overtime pay claim. Csaszi nonetheless attended the trial call, and at the hearing, the court said that Loker was scheduled to call the court at 9:30 a.m. Csaszi confirmed that Loker was still her attorney.

*5 That weekend, Csaszi met with Loker and discussed the unpaid wage claim, but Loker refused to discuss the court’s summary adjudication ruling. The next day, Csaszi appeared at court with a written statement stating that she wanted to obtain new counsel, and the court granted the motion.

In support of her [section 473](#) motion, Csaszi also submitted Loker’s declaration which stated in relevant part: “I did not prepare an opposition to Defendant Sharp’s motion for summary adjudication on the discrimination claims. I did not feel that Csaszi would prevail on the discrimination claims and I felt that to oppose Sharp’s motion might impair her credibility on the remaining issues dealing with the overtime claim and that she would incur additional costs in opposing the discrimination part of the case. However, I was apparently unable to adequately convey my feelings regarding her chances of prevailing on these issues to her. I thought I had convinced her of my recommendations prior to the scheduled opposition to Sharp’s summary adjudication motion. She did inform me that she wanted to proceed with her discrimination claims at the December 4, 2000, hearing. [¶] There was no fault attributable to Plaintiff in any failure to make a timely filing of the opposition to Defendant’s Motion For Summary Adjudication.”

B. Legal Analysis

Under [section 473](#), a party may potentially seek two types of relief for orders entered as a result of an attorney’s neglect or mistake: one that is mandatory and one that is discretionary. (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1486, 37 Cal.Rptr.2d 575 (*Metropolitan Service*)).

First, under the mandatory provision, a court “shall” grant relief whenever an application for relief meets the six-month statutory time period *and* the motion is “accompanied by an attorney’s sworn affidavit attesting to his or her mistake,

inadvertence, surprise, or neglect” (§ 473; see *In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438, 1442, 96 Cal.Rptr.2d 546.) “The purpose of this law is to relieve the innocent client of the burden of the attorney’s fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.” (*Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575.)

^[3] This mandatory relief provision is inapplicable here because Loker, Csaszi’s former attorney, did not “attest[] to [a] mistake, inadvertence, surprise, or neglect....” Instead, in his affidavit, attorney Loker said he did not file an opposition because he made the tactical decision not to oppose the motion. This assertion does not satisfy the statute’s requirement that the attorney admit a “mistake, inadvertence, surprise, or neglect.” (§ 473, see *Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575 [mandatory relief provisions apply “if the attorney *admits* neglect”, italics added].)²

^[4] But even if a party cannot satisfy section 473’s mandatory relief requirements, the party may obtain relief under the statute’s discretionary provisions. Specifically, a court “may” grant relief if the moving party shows an order was taken against him or her because of the attorney’s *excusable neglect*. (§ 473; see *Metropolitan Service, supra*, 31 Cal.App.4th at pp. 1486-1487, 37 Cal.Rptr.2d 575.) Generally, conduct falling below the professional standard of care is considered inexcusable and therefore discretionary relief cannot be granted based on such conduct. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 895, 187 Cal.Rptr. 592, 654 P.2d 775 (*Carroll*); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, 68 Cal.Rptr.2d 228.) Csaszi asserts Loker’s conduct in failing to oppose the summary judgment was the result of professional incompetence. Therefore Loker’s conduct was not “excusable” under section 473.

*6 However, an exception to the rule requiring a showing of excusable neglect applies if the party establishes the attorney’s neglect was of an extreme degree amounting to “‘positive misconduct.’” (*Carroll, supra*, 32 Cal.3d at pp. 898-899, 187 Cal.Rptr. 592, 654 P.2d 775; see *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 72-73, 28 Cal.Rptr.2d 350.) “‘Positive misconduct is found where there is a total failure on the part of counsel to represent his client.’” (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584, 286 Cal.Rptr. 739; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738-739, 216 Cal.Rptr. 300.) The attorney’s conduct is said to obliterate the existence of the attorney-client relationship and therefore cannot be imputed to the client. (*Carroll, supra*, 32 Cal.3d at p. 898, 187 Cal.Rptr. 592, 654 P.2d 775 [“‘[a]n attorney’s authority to bind his client does not permit him to impair or destroy the client’s cause of action or defense,’” quoting *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353].)

Carroll held an attorney who “grossly mishandled” a document production did not engage in “‘positive misconduct’” because he otherwise acted on behalf of his client in the litigation including attending his client’s deposition, propounding and timely responding to interrogatories, propounding requests for admissions, settling with one of the defendants, and timely filing a section 473 motion. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) *Carroll* contrasted these circumstances with the situations in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 38 Cal.Rptr. 693 and *Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d 347, 66 Cal.Rptr. 240, where the courts found attorney misconduct had effectively deprived a party of representation. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) In *Daley*, the plaintiff’s attorney abandoned his client by failing to communicate with the plaintiff, serve necessary parties, and appear at critical hearings. (*Daley v. County of Butte, supra*, 227 Cal.App.2d at pp. 391-392, 38 Cal.Rptr. 693.) In *Orange Empire*, the defendant’s attorney failed to assert a defense, appear at the trial, or file relief from a default judgment within the statutory period. (*Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d at p. 354, 66 Cal.Rptr. 240.)

We conclude the circumstances here fall within the *Daley-Orange Empire* line of cases. Although Loker filed the complaint and was initially involved in some limited discovery, Loker completely abandoned Csaszi at a critical time by failing to file an opposition to the summary adjudication motion. Further, by falsely telling Csaszi that he was filing, *and had filed*, an opposition to the summary adjudication motion, Loker did more than abandon his client—he affirmatively precluded Csaszi from protecting herself and seeking other counsel to file an opposition or seeking timely section 1008 relief. Loker additionally continued to affirmatively harm Csaszi’s interests when he asserted in his declaration in support of her section 473 motion that his decision not to file the summary judgment motion was a tactical decision, an assertion that is flatly contradicted by his own words reflected on the faxes sent to his client. This false assertion prevented Csaszi from obtaining mandatory relief under the statute.

*7 In light of Loker’s misrepresentations to Csaszi and his submission of a declaration that contradicts his written correspondence to his client, Loker’s activities amounted to positive misconduct justifying relief under section 473. In so

concluding, we are unpersuaded by Sharp's reliance on a list of the various contacts between Loker and Csaszi during the relevant times. If anything, Loker's sporadic contacts with Csaszi made the situation worse by misleading Csaszi into believing he was taking care of her interests. (See *Fleming v. Gallegos*, *supra*, 23 Cal.App.4th at p. 73, 28 Cal.Rptr.2d 350 [trial court erred by failing to find attorney abandonment where plaintiff's "attorneys displayed an unwillingness to either prosecute her lawsuit or to cease representing her"].) Further, these contacts do not show a lack of abandonment, instead they reveal merely that Loker remained Csaszi's attorney of record. *Carroll* does not require that an attorney-client relationship be formally severed before positive misconduct may be proven.

Although a [section 473](#) motion lies within the sound discretion of the trial court, " 'the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citation.] The law strongly favors trial and disposition on the merits. Therefore any doubts in applying [section 473](#) must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343, 4 Cal.Rptr.2d 195; see *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1180-1181, 75 Cal.Rptr.2d 809.) Applying these principles here, we conclude the trial court abused its discretion in failing to vacate the summary adjudication based on Csaszi's showing that her counsel engaged in "positive misconduct."

¹⁵¹ We note that Sharp does not argue, nor does the law permit, this court to sustain the trial court's denial of the [section 473](#) motion on the alternate ground that Csaszi's proposed opposition to the summary adjudication motion does not raise a triable issue of fact. In considering the propriety of a court's ruling on a [section 473](#) motion, an appellate court is limited to the question whether the court abused its discretion in granting or denying the motion, and may not reach the substantive issue as to whether the position proffered by the party seeking relief has merit. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 786-787, 59 Cal.Rptr.2d 332; see 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 184 at p. 692, 59 Cal.Rptr.2d 332.)³

Finally, we reject Sharp's argument that the trial court properly denied the [section 473](#) motion because the motion constituted an "end-run" around [section 1008](#) governing reconsideration motions. Because Csaszi satisfied the requirements of a [section 473](#) motion, the fact that the motion was not timely under [section 1008](#) does not defeat the grounds for granting the motion under [section 473](#).

III. Unpaid Wage Claim

*8 Csaszi next contends the court erred in failing to find in her favor on the unpaid wage claim, which was tried before the court sitting without a jury.

The evidence at trial showed that Csaszi was assigned to on-call shifts during which she was given a pager and was responsible for answering telephone calls pertaining to patients discharged outside of regular business hours. Sharp paid its on-call employees \$2.50 per hour for time spent on-call but not actually working, i.e., being available for a call. For time spent actually answering a call (known as "call-back time"), Sharp paid its employees one and one-half times the employee's regular hourly rate of pay, regardless whether this time reflected overtime work. Csaszi was paid \$2.50 for each hour that she reported she was on-call, and would have been paid her overtime rate if she had reported any time answering calls.

The essential basis of Csaszi's unpaid wages claim at trial was that Sharp was required to pay her time and one-half for her on-call time (when she was not actually answering calls) instead of \$2.50 because this time was devoted primarily to her employer's interests. In support, Csaszi relied on federal law providing that an employee should be fully compensated for on-call time if the time is spent " 'primarily for the benefit of the employer and his business.' " (*Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132, 65 S.Ct. 165, 89 L.Ed. 118.)

To show that her on-call time was spent primarily for Sharp's benefit, Csaszi testified that when she was on-call she was unable to attend to her personal activities and she was paged "very frequently." She said that during her entire on-call period, she would sit in a room with a telephone, facsimile machine and documents needed to perform her job duties. Csaszi claimed she could not shop, cook, sleep, travel, interact with her family or otherwise engage in any personal activities. Csaszi sought \$40,380, calculated as the total number of on-call hours multiplied by the time and one-half rate subtracted by the amount she

was paid per hour (\$2.50). Csaszi had no record of the time she actually responded to calls, explaining that she never identified this time on her timesheets because she did not understand how to do so.⁴

In contrast to this evidence, Sharp presented the testimony of its human resource director who said that employees were instructed on the manner in which they should report call-back time and that the employees did not need to limit their activities while waiting for a call. Sharp employees corroborated this testimony. These employees testified that while on-call, they wore pagers and attended to various personal activities, including cooking, shopping, attending church services, and entertaining. The pagers given to the employees had a range of at least 250 miles, and therefore the employees were free to travel throughout Southern California. Csaszi's co-workers testified they received varying numbers of calls while on-call, which averaged two to four per week, and that they knew how to claim this call-back time on their timesheets. The employees were required to respond to a pager within a 15- or 20-minute period. The employees were always paid time and one-half for the time they were actually answering a call.

***9** After considering the evidence, the court stated: "The issue to be decided is whether the requirements of being on-call as a discharge planner precluded [Csaszi] from using the time effectively for her own purposes, thus entitling her to back wages. [Citations.] [¶] The Court finds that although [Csaszi] may have subjectively believed that she needed to avoid engaging in personal activities while on-call, the evidence shows that the job duties of being on-call did not require her to do so. The fact that Ms. Csaszi elected not to engage in personal activities while on-call may be laudable, but it does not transform the on-call time to working time compensable under statute. Both the written policies of the employer as well as the actions of the employees indicate that the express and implied agreement was that employees would be paid \$2.50 for time spent on-call but not actually working and one and one-half times their regular hours rate for time spent actually working while on-call. [¶] Based on the above-stated findings and the fact that [Csaszi] did not offer any evidence specifying the dates or hours she actually worked while on-call, the Court finds that [Csaszi] has failed to meet her burden to show that she is entitled to back wages...."

^[6] We find no error. Although there is no California law directly on point, federal law sets forth appropriate standards for determining Csaszi's claim to additional wages for on-call time. Under this law, an employee must be fully compensated for on-call time spent primarily for the employer's benefit, and the question whether the time is spent primarily for the employer depends on numerous factors and a consideration of these factors in the context of the particular circumstances of the case. (See *Armour & Co. v. Wantock*, *supra*, 323 U.S. at p. 133; *Berry v. County of Sonoma* (9th Cir.1994) 30 F.3d 1174, 1183.) Although no single factor is dispositive, the predominant considerations are the agreement of the parties and the degree to which the employee is free to engage in personal activities. (*Owens v. Local No. 169, Assn. of Western Pulp & Paper Workers* (9th Cir.1992) 971 F.2d 347, 350-354.) The court must balance the factors permitting personal pursuits against the factors restricting personal pursuits to determine whether the employee is "so restricted that he is effectively engaged to wait." (*Berry v. County of Sonoma*, *supra*, 30 F.3d at p. 1183.)

Applying these principles, the trial court found Sharp's evidence credible, and concluded that the time Csaszi spent on-call was not time that was required to be spent predominately for the employer's benefit. Substantial evidence supports the court's factual conclusion. The court, as the finder of fact, was entitled to reject Csaszi's contrary evidence.

In nonetheless challenging the court's factual conclusions, Csaszi contends that Sharp's agreement to pay \$2.50 during on-call hours "amounted to an admission that [Sharp] maintained control over the employees" and therefore the trial court was required to find as a matter of law that Sharp was under a mandatory obligation to pay the same pay rate that it applied for call-back work.

***10** This argument is unsupported factually and legally.

First, the fact that Sharp paid employees \$2.50 per hour to be available to respond to phone calls was not an admission that the time spent was primarily for Sharp's benefit. Instead, Sharp's human resources director specifically testified that employees were paid for being on-call as "an incentive for carrying the pager and being available on call." She explained the pay was "additional compensation that was paid to carry the pager, to be available during a specific time should additional work be needed by that individual." She emphasized that during this waiting time, the "time is not controlled [by Sharp]" and that employee "is free to move around, engage in personal activities."

Csaszi's position is also legally unsupported. Csaszi relies solely on *Paniagua v. City of Galveston, Texas* (5th Cir.1993) 995 F.2d 1310 and *Berry v. County of Sonoma, supra*, 30 F.3d at p. 1178. In *Paniagua*, the court specifically rejected the identical argument asserted here-that an employer's agreement to compensate employees for the inconvenience of being on call "automatically render[s] the time spent on standby 'working time'...." (995 F.2d at p. 1317.) In *Berry*, the court noted that an employer's agreement to provide "at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work," but the court made clear that this was merely one of many factors in the overall analysis. (*Berry v. County of Sonoma, supra*, 30 F.3d at p. 1181 .)

The trial court here expressly noted the evidence showing that Sharp paid \$2.50 for on-call waiting time, but stated that based on the totality of the circumstances, this payment was merely compensation for the inconvenience of carrying a pager and did not reflect that the time spent by on-call employees was for the employer's benefit. Substantial evidence supported the trial court's conclusion.

Csaszi failed to establish that the trial court erred in reaching its factual conclusions with respect to the unpaid wage claim or that the court erred in applying these factual findings to the applicable legal principles.

IV. Attorney Fees

^[7] The trial court awarded \$20,269 in attorney fees to Sharp under [Labor Code section 218.5](#), which provides in relevant part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."⁵

Csaszi contends the court erred in awarding fees under this section because the applicable statute is [section 1194](#), which contains a "one-way" fee provision, permitting attorney fees only for a prevailing employee and not for a prevailing employer. [Section 1194](#), subdivision (a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance ..., including interest thereon, reasonable attorney's fees, and costs of suit."

***11** Both [sections 218.5](#) and [1194](#) potentially apply to an action seeking overtime wages, but establish different attorney fees rules. In *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 95 Cal.Rptr.2d 57, the court noted the potential conflict between the code sections, and concluded the Legislature intended that [section 1194](#) alone applies to recovery of attorney fees for overtime compensation claims, even though such claims could be construed as seeking payment of wages under [section 218.5](#). In a well-reasoned decision, the court explained that the only reasonable interpretation of the Legislature's one-way fee shifting rule in [section 1194](#) "would be one which bars employers from relying on [section 218.5](#) to recover fees in any action for *minimum* wages or *overtime* compensation. [Section 218.5](#) would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained for 'wages....' [¶] Such a harmonization of these two sections is fully justified. An employee's right to wages and overtime compensation clearly have different sources. Straight-time wages ... are a matter of private contract between the employer and employee. Entitlement to overtime compensation, on the other hand, is mandated by statute and is based on an important public policy.... 'California courts have long recognized [that] wage and hour laws "concern not only health and welfare of the workers themselves, but also the public health and general welfare." ... [¶] There can be no doubt that the one-way fee-shifting rule in [section 1194](#) was meant to 'encourage injured parties to seek redress-and thus simultaneously enforce [the minimum wage and overtime laws]-in situations where they otherwise would not find it economical to sue.' [Citation.] To allow employers to invoke [section 218.5](#) in an overtime case would defeat that legislative intent and create a chilling effect on workers who have had their *statutory* rights violated. Such a result would undermine statutorily-established public policy. That policy can only be properly enforced by a recognition that [section 1194](#) alone applies to overtime compensation claims." (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1430, 95 Cal.Rptr.2d 57.)

We agree with the *Earley* court that when an employee seeks overtime wages, the attorney fees rules are exclusively set forth in [section 1194](#). However, that principle is inapplicable here because Csaszi never alleged, or sought to prove at trial, that Sharp failed to pay her for overtime work. Instead, Csaszi brought her claim to enforce Sharp's alleged agreement that it would pay time and one-half for time spent working outside of the hospital's physical environment and that on-call time constituted "working" under established legal principles. The claim at issue concerned solely a matter of private contract

between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of [section 1194](#). Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under [section 218.5](#).

*12 Csaszi alternatively argues that even if [section 218.5](#) is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at “the initiation of the action.” (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees “if *any* party to the action requests attorney’s fees and costs upon the initiation of the action .” (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be “awarded its costs of suit and attorney fees incurred therein....” That statement is sufficient to satisfy [section 218.5](#)’s requirement that attorney fees be requested at the “initiation of the action.”

DISPOSITION

We affirm the portions of the judgment finding in Sharp’s favor on Csaszi’s claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi’s first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp’s motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: [KREMER](#), P.J., and [BENKE](#), J.

Footnotes

¹ Although it appears that the correct name of Csaszi’s former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi’s complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant’s name.

² Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether [section 473](#)’s mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare *English v. Ikon Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with *Avila v. Chua* (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)

³ We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a [section 473](#) motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi’s proposed opposition filings contained in the appellate record.

⁴ Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.

⁵ All further statutory references are to the Labor Code.

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EXHIBIT 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](#).”¹ [Section 1194](#) governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim “for nonpayment of wages” under [section 218.5](#).² See *Murphy v. Kenneth Cole Production, Inc.*, 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within [section 218.5](#), and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg*'s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg*, 434 U.S. at 416; see also 42 U.S.C. § 2000e–5(k) (“the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.”).³ The Court's holding directed the lower courts in their exercise of this discretion. [Section 218.5](#), in contrast, provides that the court “shall” award fees. “As used in the Labor Code, ‘shall’ is mandatory.” *Smith v. Rae–Venter Law Group*, 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in* *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. [Cal.Code. Civ. P. § 1032\(a\)\(4\)](#), *On–Line Power, Inc. v. Mazur*, 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by [section 218.5](#), a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.⁴

*4 Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond*, 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request \$29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at \$315 per hour.⁵ The court has previously held that \$300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond*, 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. *See* Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

*5 Thus, defendants are entitled to a fees for 70.6 hours of work at \$300 per hour, or \$21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of \$1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT 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?

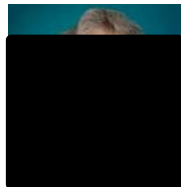
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by 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

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning -- make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

Follow Janice Harper on Twitter: www.twitter.com/Janice_Harper

6 people are discussing this article with 11 comments

Comments are closed on this entry.

Highlighted Most Recent Oldest Most Faved My Conversations

Pippen

287 Fans

2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

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: Perez/Workforce Personnel, Inc.
Date: Thursday, October 9, 2025
RFP Number: 20150004

Prepared By:
Michael Sutherland
Apex Class Action LLC
mike@apexclassaction.com
321.223.5067

Settlement Specifications	
Estimated Class Size:	254
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	254	\$317.50
USPS First Class Postage	Per Piece	\$0.78	254	\$198.12
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$2.00	25	\$50.80
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/Mandarin	Static Rate	\$1,000.00	2	\$2,000.00
			Sub Total:	\$2,666.42

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	1	\$140.00
			Sub Total:	\$620.00

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	2	\$280.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.00	254	\$254.00
USPS First Class Postage	Per Piece	\$0.78	254	\$198.12
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$1.50	25	\$38.10
Reminder Notice via Ppost Card	Static Rate	\$1.00	81	\$81.28
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	4	\$400.00
QSF Income Tax Reporting (per calendar year)2025	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:	\$2,761.50

Distribution & Settlement Fund Management-Second Distribution				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	3	\$360.00
Account Management and Reconciliation	Per Hour	\$140.00	2	\$280.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.00	254	\$254.00
USPS First Class Postage	Per Piece	\$0.78	254	\$198.12
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$1.50	25	\$38.10
Reminder Post Card	Per Piece	\$1.00	76	\$76.20
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	4	\$400.00
QSF Income Tax Reporting (per calendar year) 2026	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	\$2,951.42

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:				\$10,564.34

TOTAL CAPPED ADMINISTRATION COST: \$10,250.00

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 9, 2025

CASE ASSUMPTIONS

Class Members	254
Opt Out Rate	1%
Opt Outs Received	5
Total Class Claimants	249
Subtotal Admin Only	\$10,929.62

Flat Fee Total \$10,929.62
For 254 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Two Disbursements & Two Tax Years

Case: WorkForce 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 **254** 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	2	\$200.00
Call Center & Long Distance	\$2.00	34	\$68.00
NCOA (USPS)	\$50.00	1	\$50.00
Total			\$718.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Language Translation	\$900.00	2	\$1,800.00
Data Merge & Duplication Scrub	\$0.10	254	\$25.40
Notice Packet & Opt-Out Form	\$1.50	254	\$381.00
Estimated Postage (up to 2 oz.)*	\$1.15	254	\$292.10
Static Website	\$200.00	1	\$200.00
Check Cashing Reminder Postcard Postage Included	\$0.60	67	\$40.20
Total			\$2,938.70

* 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	38	\$38.10
Remail Notice Packets	\$1.50	35	\$52.65
Estimated Postage	\$1.15	35	\$40.37
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$301.12

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Database	\$150.00	1	\$150.00
Non Opt-Out Processing	\$200.00	1	\$200.00
Case Associate	\$55.00	4	\$220.00
Deficiency & Dispute Letters	\$10.00	0	\$0.00
Case Manager	\$85.00	2	\$170.00
Total			\$740.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$135.00	2	\$270.00
Disbursement Review	\$135.00	2	\$270.00
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 * (x 2)	\$0.90	249	\$448.20
Estimated Postage (x 2)	\$0.70	249	\$348.60
Total			\$2,336.80

* 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	\$75.00	2		\$150.00
Remail Checks (Postage Included)	\$2.00	85		\$170.00
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	4		\$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,900.00	1		\$1,900.00
Total				\$3,895.00

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

Estimate Total: \$10,929.62



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-05

October 13, 2025

Lizzett Cortez
The Spivak Law Firm
1875 Century Park East Fl 7
Los Angeles CA 90067

RE: *Perez v. Workforce Personnel, Inc.*

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 \$23,924. As a courtesy, we are offering a \$1,000 discount, for a discounted total of \$22,924.

Please let me know if you have questions. I look forward to this opportunity to work together.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Patrick J. Ivie".

PATRICK J. IVIE
Chief Revenue Officer

m: 310-995-6455
o: 714-975-5260
e: pivie@simpluris.com



3194-C Airport Loop Drive, Costa Mesa, CA 92626
www.simpluris.com | 1 (800) 779 - 2104



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

Estimate Number:	20251006-PJI-05	Prepared By:	Patrick J. Ivie
Estimate Date:	10/13/2025	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	1/11/2026	Email:	pjvie@simpluris.com

Primary Contact
Attorney: **Lizzett Cortez**
Firm: The Spivak Law Firm
Email: lizzett@spivaklaw.com

Opposing Counsel Contact
Attorney:
Firm:
Email:

**Case Name: *Perez v. Workforce Personnel, Inc.
Class and PAGA Settlement***

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	254	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:	2
State(s):	CA	Tax Year(s):	3
Length of Administration:	30 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	254	\$1,530.10
Postage	\$5.02	254	\$1,275.08
NCOA/CASS/LACS	\$0.14	254	\$35.56
Undeliverable Processing and Skip Trace	\$0.32	26	\$8.32
Remail Notice (assuming 85% skip trace success)	\$7.02	22	\$155.23
Remail Postage	\$0.72	22	\$15.91
Single Postcard Reminder Mailing	\$0.18	254	\$45.72
Postage	\$0.59	254	\$149.86
Mailing Supervisor	\$55.00	2	\$110.00
Total:			\$7,825.78

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	30 Months	\$2,850.00
IVR (includes toll-free number charges)	\$15.00	1	\$15.00
Subtotal			\$3,215.00

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	13	\$22.23
Opt-out Processing	\$1.75	3	\$5.25
Reporting to Counsel (hours)	\$100.00	4	\$400.00
Total:			\$897.48

Award Disbursement #1

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- The fund will be paid in 24 installments with two distributions
- Disburse award payments and tax documents
- 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	15	\$1,875.00
Print & Mail Distribution Check and Tax Docs	\$0.60	254	\$152.40
Postage	\$5.02	254	\$1,275.08
Process Returned Checks (assuming 5%)	\$0.20	13	\$2.60
Skip Trace Search Undeliverable Checks	\$0.12	13	\$1.56
Remail Checks (includes postage)	\$1.70	13	\$22.10
QSF Annual Tax Reporting and Reconciliation	\$850.00	1	\$850.00
Distribution Manager	\$90.00	2	\$180.00
Total:			\$5,463.74

Award Disbursement #2

- 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
QSF Monthly Maintenance	\$125.00	15	\$1,875.00
Print & Mail Check and Tax Documents	\$0.60	254	\$152.40
Postage	\$0.72	254	\$182.88
Process Returned Checks (assuming 5%)	\$0.20	13	\$2.60
Skip Trace Search Undeliverable Checks	\$0.12	13	\$1.56
Remail Checks (Includes Postage)	\$1.70	13	\$22.10
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	2	\$1,700.00
Distribution Manager	\$90.00	2	\$180.00
Total:			\$5,546.54

Case Completion

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

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc.	\$45.00	1	\$45.00
Project Manager-Wrap-up Final Issues	\$110.00	1	\$110.00
Total:			\$280.00

Total Estimated Cost of Administration:	\$23,924
Less Client Courtesy Discount:	-\$1,000
Discounted Total:	\$22,924

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