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7
8 Attorneys for Plaintiff(s),

9 KIMBERLY DAWN VANDERMOST, and all others similarly situated

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 KIMBERLY DAWN VANDERMOST, on
14 behalf of herself and all others similarly situated,
15 and the general public, and as an “aggrieved
16 employee” on behalf of other “aggrieved
17 employees” and the State of California under the
Labor Code Private Attorneys General Act of
2004,

18 *Plaintiff(s),*

19 vs.

20 DYWIDAG SYSTEMS INTERNATIONAL,
21 USA, INC., a New York corporation; and DOES
22 1–50, inclusive,

23 *Defendant(s).*

Case No. 23STCV06697

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
KIMBERLY DAWN VANDERMOST’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: February 5, 2026

Hearing Time: 10:00 a.m.

Hearing Dept.: SSC-7, The Honorable
Samantha P. Jessner

Action filed: March 28, 2023

Trial Date: Not Set



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1 **DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF KIMBERLY**
2 **DAWN VANDERMOST’S MOTION FOR PRELIMINARY APPROVAL OF CLASS**
3 **ACTION SETTLEMENT**

4 I, DAVID SPIVAK, declare as follows:

5 2. I am an attorney duly licensed to practice law in the State of California and am an
6 attorney of record for Plaintiff Kimberly Dawn Vandermost (“Plaintiff”) in her lawsuit against
7 Defendant Dywidag Systems International, USA, Inc. (“Defendant”). Plaintiff and Defendant are
8 collectively referred to as the “Parties.”

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

11 4. The Class Action and PAGA Settlement Agreement and Class Notice (the
12 “Settlement”) is attached hereto as **Exhibit 1**. The Settlement Class consists of all persons whose
13 employment with Defendant in California terminated during the Class Period. The “Class Period”
14 means the period from March 28, 2020 through June 28, 2024. *Id.* The “Aggrieved Employees”
15 are all persons whose employment with Defendant in California terminated during the PAGA
16 Period. The “PAGA Period” begins March 27, 2022 and ends June 28, 2024. *Id.* The Settlement
17 is written, signed by all necessary Parties, and attached to this declaration as stated above.

18 ***The Release Provisions***

19 5. **Released Persons.** Under the Settlement, the release to be given by the
20 Participating Class Members (other than the Class Representative) is limited to Defendant named
21 in the Operative Complaint, together with its officers, directors, employees, and agents. The
22 Released Parties consist of: Defendant and each of its former and present directors, officers,
23 shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries and
24 affiliates. Settlement, ¶ 1.42.

25 6. **Released Claims.** Under the Settlement, the release to be given by the Participating
26 Class Members (other than the Class Representative) is limited to the claims stated in the Operative
27 Complaint, or that reasonably could have been alleged in the Operative Complaint, and those based
28 solely upon the facts alleged in the Operative Complaint. Settlement, ¶ 6.2.

7. **Release Period.** Under the Settlement, the release to be given by the Participating



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1 Class Members (other than the Class Representative) is limited to liability that arose during the
2 Class Period. Settlement, ¶ 6.2.

3 8. **PAGA Release.** Under the Settlement, Plaintiff releases all claims for civil
4 penalties that could have been sought by the Labor Commissioner for the violations identified
5 in Plaintiff's pre-filing letter to the LWDA. Plaintiff does not release the claim for wages or
6 damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class
7 Member. The PAGA Release states as follows: Release by Non-Participating Class Members Who
8 Are Aggrieved Employees:

9
10 All Non-Participating Class Members who are Aggrieved Employees are deemed to
11 release, on behalf of themselves and their respective former and present representatives,
12 agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from
13 all claims for PAGA penalties that were alleged, or reasonably could have been alleged,
14 based on the PAGA Period facts stated in the Operative Complaint and the PAGA
15 Notice and ascertained in the course of the Action, and any claims for civil penalties
16 arising from the non-timely payment of final wages due and owing during the PAGA
17 Period.

18 Settlement, ¶ 6.3.

19 *No Reversion*

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

22 *Taxes*

23 10. The Settlement provides that Defendant will separately pay the employer's
24 share of any applicable payroll taxes. Settlement, Ex. A, § 3.I.

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

12. The Settlement provides as follows with regard to the tax treatment of
settlement shares: Tax Allocation of Individual Class Payments. 100.00% of each Participating



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1 Class Member's Individual Class Payment will be allocated to settlement of claims for interest
2 and penalties (the "Non-Wage Portion"). They are not subject to wage withholdings and will be
3 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability
4 for any taxes owed on their Individual Class Payment. Settlement, ¶ 3.2.4.1.

5 ***Factual and Procedural Background***

6 13. **Plaintiff's Employment with Defendant.** Defendant employed Plaintiff as a
7 Regional Contract Manager. in California from about October 13, 2003 until April 4, 2022.

8 14. **LWDA Notice.** On March 27, 2023, Plaintiff notified Defendant and the
9 California Labor and Workforce Development Agency ("LWDA"), pursuant to the California
10 Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"),
11 of alleged Labor Code violations committed by Defendant. A true and correct copy of the letter
12 to the LWDA dated March 27, 2023 is attached hereto as **Exhibit 2**.

13 15. **Lawsuit.** On March 28, 2023, Plaintiff filed a Class Action Complaint in the Los
14 Angeles County Superior Court, Case No. 23STCV06697, against Defendant on behalf of herself
15 and others similarly situated, alleging causes of action on a class-wide basis for: Waiting Time
16 Penalties (Lab. Code §§ 201-203). On June 1, 2023, Plaintiff filed her First Amended Complaint
17 adding a claim under the Labor Code Private Attorneys General Act of 2004, Labor Code §§
18 2698, *et seq.* ("PAGA"). On June 5, 2023, Defendant filed an answer to Plaintiff's First Amended
19 Complaint. Defendant denies all of Plaintiff's allegations and strongly contends that its wage and
20 hour policies, practices, and procedures are fully compliant with all applicable laws. A true and
21 correct copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff's
22 First Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Defendant's
23 Answer is attached hereto as **Exhibit 5**.

24 16. **Investigation.** On September 01, 2023, Plaintiff requested that Defendant
25 informally disclose documents and data to enable Plaintiff to prepare for settlement discussions,
26 including the number of putative class members and aggrieved employees and the number of
27 paychecks and workweeks for the limitations period applicable to Plaintiff's claims. Plaintiff also
28 requested a reasonable, randomly selected sample of Defendant's time and payroll records, and



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1 related personnel records. *Id.* Finally, Plaintiff requested Defendant's written policies applicable
2 to the claims at hand and asked Defendant identify any and all comparable claims against it.

3 17. The Parties thereafter engaged in an informal, voluntary exchange of information
4 in the context of privileged settlement discussions to facilitate an early mediation. Defendant
5 produced Plaintiff's entire personnel file (including policies and agreements she signed and
6 acknowledged) and copies of its relevant company written policies.

7 18. **Sampling.** Defendant contends that it employed 147 putative class members
8 during the period of March 28, 2020 to November 14, 2023. Defendant produced the records of
9 19.00% of the putative class members for the period of March 28, 2020 to November 14, 2023.
10 There were records for 28 employees in the sample. Plaintiff chose the sample. The sample was
11 randomly selected. The sample consisted of time records, payroll records, and related records.

12 19. **Plaintiff's Data Analyst.** Plaintiff's counsel to analyzed the sample. Plaintiff
13 employed the Raosoft⁷ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to
14 determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004)
15 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative
16 margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin
17 of error of 43.3 percent was unacceptable. Using a margin of error of 32%, a confidence level of
18 95%, and a population size of 147, the Raosoft Sample Size Calculator recommended a sample
19 of 9. A true and correct copy of the results from the Raosoft Sample Size Calculator are attached
20 as **Exhibit 6** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that
21 Plaintiff's data analyst evaluated is statistically reliable. *Id.*

22 20. **Mediation.** On December 21, 2023, following much of the foregoing informal
23 discovery and exchange of information, the Parties participated in a mediation session presided

24 ⁷ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the
25 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
26 programs for information gathering and analysis. The family of survey software supports data
27 collection and reporting for any form-based data. Support is for web-surveys and forms, email
28 distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage
advertises that is it "database web survey software for gathering information."
<http://www.raosoft.com/> . It also advertises, "The parameters of the sample size calculation are
something that you choose." <http://www.raosoft.com/suggestreading.html>.



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over by Mediator Phillip K. Cha, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations. During the mediation session, each side, represented by her/its respective counsel, recognized the risk of an adverse result in the Action. The case did not settle at that time. However, discovery and settlement negotiations continued with the aid of the mediator. On February 10, 2025, the Parties agreed to settle the Action and all other matters covered by the Settlement pursuant to the terms and conditions of the Settlement.

Similar Actions

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

Uncashed Checks

22. **Unclaimed Property Fund.** The Settlement provides for the disposition of uncashed checks as follows: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement, ¶ 4.4.3. In my view, sending funds represented by uncashed checks to the Unclaimed Property Fund instead of a *cy pres* recipient is the best way to insure that the Class Members and Aggrieved Employees actually receive their portions of the Settlement.

Ascertainable and Numerous Class

23. **Ascertainability.** A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference



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1 potentially be subject to the same primary affirmative defenses as those of absent Class Members.
2 Accordingly, Plaintiff's claims are typical of the Class.

3 *Adequacy*

4 27. The adequacy requirement is met where the plaintiff is represented by counsel
5 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
6 the class's interests. In other words, where the plaintiff has adequate counsel, the plaintiff may
7 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
8 ability to represent the class.

9 28. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
10 with the absent Settlement Class Members. Plaintiff contends that she is an adequate class
11 representative. Plaintiff and the Class Members have strong and co-extensive interests in this
12 litigation because they all worked for Defendant during the relevant time period, allegedly
13 suffered the same alleged injuries from the same alleged course of conduct, and there is no
14 evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff
15 has demonstrated her commitment to the Settlement Class by, among other things, retaining
16 experienced counsel, providing counsel with documents and extensively speaking with them to
17 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
18 well as exposing herself to the risk of attorneys' fees and costs awards against her if this lawsuit
19 had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative.

20 *Background of Class Counsel*

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

24 30. In December of 1995, the Supreme Court for the State of California admitted me
25 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
26 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
27 2013, I became admitted to the New York State Bar.

28 31. My law practice has always focused on representation of private and public



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employees with claims of unpaid wages, wrongful termination, harassment, family and medical leave, whistleblowing, discrimination, benefits, and civil rights violations. One of my websites, FightWrongfulTermination.com, provides a further description of my practice.

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

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

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

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

c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton (the Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights claims and wrongful termination claims against employer in a month-long jury trial. The jury awarded compensatory and punitive damages. *See* "Activist Says Criticism of Rail Plan Cost His Job" by



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1 Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to Fired
2 Social Worker" by Dan Weikel, Los Angeles Times, June 10, 2000; "A Whistleblower's
3 Revenge" by Susan Goldsmith, New Times Los Angeles, June 8, 2000.

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

11 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
12 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
13 Agent, followed by an award of Attorneys' fees and costs.

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

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

27 34. Since 2007, I have prosecuted several traditional wage & hour class actions as the
28 sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*



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1 v. *Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*
2 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
3 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
4 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
5 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
6 an hourly rate of \$525.00 for my services.

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

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

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

15 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
16 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
17 court on behalf of nonexempt employees).

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

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

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

28 f. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058



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1 (appointed Class Counsel and granted final approval by this Court of class action settlement on
2 behalf of personal trainer employees).

3 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
4 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
5 action settlement on behalf of medical devices employees).

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

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

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

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

18 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
19 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
20 on behalf of dairy and agricultural laborers).

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

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

27 o. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, United
28 States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN



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1 (appointed Class Counsel and granted final approval of class action settlement on behalf of virtual
2 customer account executives).

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

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

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

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

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

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

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

27 w. *Volney-Parris v. Southern California Edison Company*, Los Angeles
28 Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of class



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1 action settlement on behalf of customer specialist employees).

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

5 ***Class Action Treatment Is Superior***

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

15 ***The Settlement is Presumptively Fair***

16 38. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted
17 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
18 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
19 weaknesses of their respective cases and Defendant’s estimated exposure. Both defense counsel
20 and I are particularly experienced in employment law and wage and hour class actions. We are
21 experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks
22 and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and
23 hour class settlements, including many involving the same issues presented here. Counsel on both
24 sides share the view that the Settlement is a fair and reasonable settlement in light of the
25 complexities of the case and uncertainties of class certification and litigation, and a fair result for
26 the Class Members.

27 ***Exposure & Risk Analysis***

28 39. Plaintiff prepared “damages” estimates in advance of the mediation. Plaintiff



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determined Defendant's maximum possible exposure for restitution and penalties to be approximately \$633,107.20 (consisting of \$603,807.20 for waiting time penalties and \$29,300.00 in civil penalties for untimely wages). True and correct copies of the spreadsheets I prepared for mediation of this Action are collectively attached to this declaration as **Exhibit 7**.

40. The estimates are in essence "home run" projections that omit data points that will undoubtedly reduce the maximum possible damages award and do not factor in any of the risks involved in litigating this Action. Plaintiff calculated the damages based on the number of pay periods provided by Defendant, Plaintiff's reports, and the sample data. *Id.* Plaintiff also considered the possibility that Defendant could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. Plaintiff's Counsel applied discounts to the maximum possible exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendant would likely by trial have gathered releases from the majority of the Class Members. A settlement for approximately 43.44% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.⁸

41. My initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, I believe a class settlement for \$275,000.00 is fair and reasonable.

42. **Risks Associated with the Collective Bargaining Agreements.** A vast majority of the Class Members were subject to a collective bargaining agreement. It states

⁸ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").



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1 Pursuant to California Labor Code Section 2699.6, the Parties hereby expressly
2 and unambiguously waive the provisions of the California Private Attorneys General
3 Act (PAGA), Labor Code Section 2698, et seq., and agree that none of the provisions
4 of that statute apply to any of the employees covered by this Agreement. The parties
5 further agree that this Agreement prohibits any and all violations of the California
6 Labor Code sections identified in Labor Code 2699.5 and 2699(f) as well as any
7 others that would be redressable by PAGA, and that such claims shall be resolved
8 exclusively through the Grievance Arbitration procedure contained in this Agreement
9 and shall not be brought in a court of law or before any administrative agency such as
10 the California Labor Commissioner.

11 An arbitrator presiding over an arbitration conducted pursuant to the Grievance
12 Procedure shall have the authority to make an award of any and all remedies otherwise
13 available under the California Labor Code, except for an award of penalties that would
14 be payable to the Labor and Workforce Development Agency.

15 All claims or disputes involving alleged violations of the Industrial Welfare
16 Commission Wage Order 16, the California Labor Code, and the Fair Labor Standards
17 Act, and all derivative claims under Cal. Business & Professions Code section 17200,
18 et. seq., as well as for associated penalties, not otherwise covered by the this
19 Agreement, shall be subject to final and binding arbitration pursuant to Section 28 of
20 this Agreement. To the extent permitted by law, all such claims or disputes shall be
21 brought by or on behalf of the employee in their individual capacity only and not as
22 a member of any purported class, collective or representative proceeding, any
23 Arbitrator shall not have the authority to fashion a proceeding as a class, collective or
24 representative action or to award relief to a group or class of employees in one
25 arbitration proceeding. Nothing herein shall prohibit the parties from entering into an
26 agreement to consolidate grievances before the Board of Adjustment hearing . . .

27 **SECTION 28. Grievance Procedure** Boards of Adjustment shall be created for the
28 settlement of disputes, except jurisdictional disputes, which shall be composed of two
(2) representatives selected by the Union and two (2) representatives selected by the
Employers. Members of a Board of Adjustment shall be affiliated neither with the
Local Union or the individual employer involved in the specific grievance hearing.
One of the two representatives selected by the Union shall be the President of the
District Council of Iron Workers or his designated representative and the
representatives of the individual signatory employers shall be selected by the
Employers Association involved. It is agreed all individual employers covered by this
Agreement will be represented by one of the Associations and such individual
employers shall reimburse the Association selected, actual costs incurred in
preparation for such representation. Said Board shall organize within three (3)
working days or as soon as practical and shall elect a Chairman and a Secretary and
shall adopt rules of procedure which shall bind the contracting parties. Said Board
shall have the power to adjust any differences that may arise regarding the meaning
and enforcement of this Agreement. Within fifteen (15) days of the time any dispute
is referred to it by either party, said Board shall meet to consider such dispute. If the



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1 Board cannot agree on any matter referred to it, the members thereof within three (3)
2 days shall choose a fifth member who shall have no business or financial connection
3 with either party. The decisions of said Boards shall be determined by a majority of
4 their members and, pending such decisions, work shall be continued in accordance
5 with the provisions of this Agreement. Any and all expenses incurred by Boards of
6 Adjustment created under this Section 28, including but not limited to the expense of
7 employing a fifth member, shall be borne by the California Field Iron Workers
8 Administrative Trust. No proceeding hereunder based on any dispute, complaint or
9 grievance herein provided for, shall be recognized unless called to the attention of the
10 individual employer or the Local Union involved in writing within fifteen (15) days
11 after the alleged violation is committed. Copies of decisions of the Boards shall be
12 mailed to the individual employer involved in this dispute, the appropriate
13 Association, the California Ironworker Employers Council and the Union.

14 The collective bargaining agreements entered into between Defendant on the one hand, and the
15 Class Members, on the other, present a significant risk to the success of Plaintiff's class action
16 litigation. According to Defendant, the vast majority of the Class entered into collective
17 bargaining agreements with Defendant. As the collective bargaining agreements in question
18 restrict potential litigants from bringing class actions against Defendant, Plaintiff would be
19 effectively barred from pursuing claims on behalf of the Class in Court. Thus, there is a significant
20 risk the Court could determine that those Class Members who have not entered into collective
21 bargaining agreements with Defendant do not constitute a sufficiently numerous class to justify
22 class action treatment. As such, by continuing to trial on class-wide claims, Plaintiff would run
23 the high risk of suffering defeat due to the existence of the collective bargaining agreement.
24 Moreover, the collective bargaining agreements would pose danger to any class certification
25 motion brought by Plaintiff. Because different defenses would apply to some Class Members and
26 not others – i.e., the existence of signed collective bargaining agreements – there is a risk that the
27 Court could determine that Plaintiff's claims present too many individualized inquiries to justify
28 class certification. A true and correct copy of the collective bargaining agreement is attached to
this declaration as **Exhibit 8**.

43. **Risks Associated with the Waiting Time Penalties Claims.** There is a collective
bargaining agreement with a union that governs the employment of the vast majority of the
employees for whom Plaintiff seeks to represent. *See* Exhibit 8. Additionally, Defendant contends



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1 it provided evidence that only a portion of wages owed to terminated class members, consisting
2 of vacation pay, was paid after the termination and only as the result of an innocent error. Without
3 proof of willful behavior, Plaintiff will be unable to recover these penalties.

4 **44. Risks Associated With the PAGA Claim.** As the Operative Complaint makes
5 clear, Plaintiff predicates her PAGA claim on the same Labor Code violations as her other
6 claims. Plaintiff's "damages" spreadsheet, Exhibit 7, states the length of the relevant time period
7 for the PAGA claim and the number of employees allegedly employed during that time period.
8 Plaintiff's "damages" spreadsheet, Exhibit 7, also states the total amount of civil penalties for
9 which the Defendant is potentially liable if all allegations are proven. As I state above in
10 connection with Plaintiff's claims for statutory penalties with regard to proof Defendant's intent,
11 knowledge and willfulness, there are serious risks to proving Defendant acted intentionally,
12 knowingly, and willfully in violating the rights of Class Members under the Labor Code. Plaintiff
13 calculated the agreed-upon amount of civil penalties by considering the risks outlined above and
14 that the Settlement already provides substantial payments for the Labor Code violations that the
15 civil penalties claim is predicated on.

16 **45.** Regarding PAGA, a court has discretion to award a lesser amount than the
17 maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
18 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has
19 posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus,
20 the PAGA claims likewise face significant uncertainty. There is a risk that the Court would
21 consider the maximum civil penalty available to be confiscatory.

22 **46.** This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
23 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
24 counsel estimated a maximum possible exposure of approximately \$29,300.00 in civil penalties.
25 This estimate did not take into account any of the risks discussed above and assumed a violation
26 for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same
27 pay period for the same alleged violations of different Labor Code provisions and derivative
28 violations. Although two federal district court decisions held that "stacking" PAGA penalties in



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1 this fashion may be appropriate to determine the amount in controversy for purposes of removal
2 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
3 multiple PAGA penalties for the same violation for the same pay period under different Labor
4 Code provisions. This may be because the PAGA does not provide for what many employers
5 characterize as claim splitting and not merely stacking.

6 47. I am aware of only two significant awards under the PAGA in a contested
7 proceeding, both issued by federal district courts.⁹ PAGA penalty awards are often small even for
8 egregious, intentional violations of the Labor Code.¹⁰

9
10 ⁹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
11 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
\$18,695,692.58. In this regard, the district court stated,

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

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

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

29 ¹⁰ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number
30 BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and
31 correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 19**. The plaintiff
32 sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
33 Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
34 the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit**
35 **20**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing
36 PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00.
37 *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar
38 result could occur here.



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1 48. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a
2 prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only
3 \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828.
4 Further, in *Carrington v. Starbucks Corp.*, (2018) 30 Cal.App.5th 504, 529, the Court of Appeal
5 affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the
6 defendant's meal period violations. A similar result could occur here.

7 49. **Risks Associated With A Pick Up Stix Campaign.** An employer enjoys the right
8 to settle a putative class member's disputed wage claims individually, without the consent or
9 involvement of class counsel. *See Chindarah v. Pick Up Stix, Inc.*, (2009) 171 Cal. App. 4th 796.
10 As discussed above, Defendant may launch a "pick off" settlement campaign to pursue individual
11 release agreements from the Class Members, thereby potentially narrowing the size of the
12 Settlement Class – 161 members – until it is no longer numerous enough for class certification.
13 *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a
14 significant reduction of claim value in settlement negotiations.

15 50. While the evidence gathered through Plaintiff's discovery supports the merits of
16 the claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation
17 presents significant risks that support a downward departure from Defendant's estimated liability
18 exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages,
19 monetary penalties or other relief that the Class could reasonably expect to be awarded at trial,
20 taking into account the likelihood of prevailing and other attendant risks. It also represents a fair,
21 adequate, and reasonable compromise amount for these claims and warrants preliminary
22 approval. *Id.*, *Torrison v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
23 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C.*
24 *Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's
25 financial stability "strongly supports the reasonableness of the settlement"); *See Laguna v.*
26 *Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

27 51. Above, Plaintiff lists the maximum amounts recoverable in this action.
28 However, based on the difficulties of proof, the Defendant's defenses, and the other attendant



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1 risks I identify above, I estimate the *likely* awards at trial should Plaintiff prevail to be the
2 following amounts:

3 a. Waiting time penalties in the amount of \$573,616.84; and

4 b. Civil penalties in the amount of \$27,835.00.

5 The total of these amounts is \$601,451.84. The Gross Settlement Amount of \$275,000.00 is
6 45.72% of this amount.

7 ***Allocation of the PAGA Payment***

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

14 ***Attorneys' Fees and Costs***

15 53. I intend to request Class Counsel Attorneys' Fees of \$91,666.67 (33.33% of the
16 GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently
17 estimate to be approximately \$8,528.09 and will be no more than \$12,500.00 at the conclusion of
18 matters related to the Settlement. In view of my efforts and risks in pursuing this case these
19 amounts are well within the range of reasonableness and thus warrant this Court's preliminary
20 approval. In addition, based on my experience in wage and hour class action matters, fee awards
21 of approximately one-third of the settlement fund are routinely approved as reasonable. I have
22 been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage
23 and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior
24 Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior
25 Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*,
26 San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v.*
27 *Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-
28 third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court,



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

54. The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained information from putative class members, met and conferred with Defendant's counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendant and obtained through other sources, researched applicable law, and estimates of "damages" for purposes of settlement discussions, among other tasks.

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

Class Representative Service Payment

56. The Settlement provides that Plaintiff may seek a Class Representative Service Payment of \$10,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the risks she undertook on behalf of Class Members. Here, Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about her work history with Defendant and Defendant's policies and practices with respect to the wage and hour claims at issue, assisting counsel in identifying witnesses, participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendant's attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrant preliminary approval.



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1 57. Plaintiff began her investigation and retention of attorneys to pursue the claims at
2 issue on approximately October 6, 2022. Awarding Plaintiff 3.64% of the GSA is entirely
3 reasonable given Plaintiff's efforts in this case undertaken on behalf of absent Class Members.

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

18 59. In taking the actions outlined above, Plaintiff has exposed herself to significant
19 risks, including the risk that she could have been ordered to pay Defendant's attorneys' fees and
20 costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that
21 she could, in the future, face a potentially hostile work environment and worsened career
22 prospects for suing a prior employer for wage and hour violations and serving as the Plaintiff in
23 a class action lawsuit. Additionally, Plaintiff has exposed herself to the risk that she could end up
24 receiving less than Defendant would have paid her at the beginning of the Action via a C.C.P. §
25 998 offer or other individual settlement offer to drop her class allegations. On many occasions,
26 California courts have ordered wage and hour plaintiffs and would-be class representatives to pay
27 outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

28 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist.

- 1 March 1, 2013) (court awarded the employer \$2,210,360 in attorney’s fees to be
2 paid by employee for employee’s unsuccessful suit for unpaid bonuses). A true
3 and correct copy of the court’s order is attached to this declaration as **Exhibit 9**.
4 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov.
5 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney’s fees and
6 costs to employer for unsuccessful suit for unpaid wages). A true and correct copy
7 of the court’s order is attached to this declaration as **Exhibit 10**.
8 c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb.
9 18, 2003) (court ordered the employee to pay \$20,269 in attorney’s fees and costs
10 to the employer for unsuccessful suit for unpaid wages and overtime). A true and
11 correct copy of the court’s order is attached to this declaration as **Exhibit 11**.
12 d. *Villalobos v. Guertin*, No. CIV. S–07–2778 LKK/GGH, 2009 WL 4718721
13 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff’s counsel to pay
14 \$21,180 in attorney’s fees and \$1,525.80 in costs to defense counsel for unpaid
15 wages). A true and correct copy of the court’s order is attached to this declaration
16 as **Exhibit 12**.

17 Such costs awards are higher than the share of the Net Settlement Amount (“NSA”) that Plaintiff
18 stands to receive as a participating Class Member. It is unfair in view of the substantial risk of an
19 adverse fee or cost award of several thousand dollars that Plaintiff receives less as a reward for
20 taking such a risk.

21 60. As I explain further below, Plaintiff’s individual share of the Net Settlement
22 Amount will be less than that of some absent Participating Class Members. Under the Settlement,
23 Participating Class Members will receive a *pro rata* distribution of the Settlement proceeds
24 proportionate to the number of Employment Terminations he or she had with Defendant during
25 the Class Period, compared to total Employment Terminations of all participating Class Members
26 during the Class Period, as reflected by Defendant’s records. Because Plaintiff had one
27 Employment Termination during the Class Period, some Class Members will have had more
28 Employment Terminations than Plaintiff and, as a result, receive larger shares in the recovery –



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1 *even though they did not actively participate in the lawsuit.* While this is a risk that Plaintiff
2 assumed when she brought her lawsuit, it is unfair to limit Plaintiff's Class Representative Service
3 Payment to an amount not much greater than an absent Class Member's share of the recovery. To
4 encourage employees like Plaintiff to don the helm of class champions (and thereby advance the
5 important public policies behind class actions), the Court should award something substantial to
6 Plaintiff for her readiness to receive less than absent Class Members while assuming all the risk
7 and delay of payment.

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

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

23 63. Plaintiff faced the risk that she could face worsened career prospects for suing a
24 former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.
25 Because she filed a lawsuit in the California Superior Court, a public record now exists that
26 Plaintiff sued her employer for Labor Code violations – a fact that won't be lost on prospective
27 employers considering her for a job. Common sense dictates that an employer will think twice
28 about hiring someone who sued her last employer. Legal experts have recognized this fact.



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1 Attached to this declaration as **Exhibit 13** is a true and correct copy of the article “Employees:
2 Better Think Twice Before Suing Your Employer (Four Reasons Why).” Attached to this
3 declaration as **Exhibit 14** is a true and correct copy of the article “What To Expect If You Sue
4 Your Employer.” California even has laws to address this risk: Labor Code § 1102.5 prohibits
5 retaliation against employees who speak up about Labor Code violations and Labor Code § 98.6
6 prohibits discrimination against employees who bring Labor Code violations to the attention of
7 the Labor Commissioner. Thus, the risk to Plaintiff’s future employment shows that the Class
8 Representative Service Payment sought is fair, adequate, and reasonable, and warrants final
9 approval of the Court.

10 64. Class Counsel depended on Plaintiff’s input to prosecute this lawsuit. Plaintiff
11 made this case possible for a number of reasons. First, Plaintiff challenged her employers on an
12 unlawful practice that led to Defendant paying a large percentage of the unpaid wages in question
13 plus interest to the remainder of its employees – in spite of Defendant’s financial limitations.
14 Plaintiff provided Class Counsel with detailed descriptions of how Defendant’s business operates,
15 the hours and scheduling of employees, and the nature of the work Class Members performed.

16 65. By agreeing to settle the case in the best interest of the Class Members, Plaintiff
17 has given up the right to pursue individual claims and recover substantially more in waiting time
18 penalties and civil penalties that she will release as part of the Settlement. Plaintiff did not seek
19 an individual settlement for her claims at all, instead choosing to prosecute the claims on behalf
20 of the Class Members.

21 66. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
22 were significant risks (outlined in the preliminary approval motion) to any award on behalf of the
23 Class Members and still Plaintiff achieved a settlement of \$275,000.00. This outstanding result
24 calls for significant awards to Plaintiff for making the result possible.

25 ***Class Member and Aggrieved Employee Settlement Share Estimates***

26 67. Above, Plaintiff estimates Plaintiff’s anticipated Individual Class Payment.

27 68. **Individual Class Payments.** At \$36.74 per hour (the average Class Member’s
28 hourly wage), the average estimated Individual Class Payment to Participating Class Members is



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1 the equivalent of over 25 hours of unpaid wages ($\$930.64 / \$36.74 = 25.33$ hours). Thus, this is a
2 result the Class can be proud of in view of the significant risks.

3 69. Defendant estimates that there are 359 Employment Terminations for the Class
4 Period because many of the Class Members had more than one Employment Termination during
5 the Class Period. So, each Employment Termination has a value of approximately \$417.36
6 ($\$149,833.33$ Net Settlement Amount / 359 Employment Terminations = \$417.36). Plaintiff had
7 1 Employment Termination during the Class Period. Based on this, it is anticipated that Plaintiff
8 will receive an Individual Class Payment of approximately \$417.36 as a participating Class
9 Member (1 Employment Termination x \$417.36 = \$417.36) while the average estimated
10 Individual Class Payment to Participating Class Members will be approximately \$930.64. Some
11 Class Members – those who had more Employment Terminations during the Class Period – will
12 receive more, and some less. The lowest possible Individual Class Payment to a Participating
13 Class Member (i.e., to those who had only one Employment Termination in the Class Period) will
14 be approximately \$417.36.

15 70. The Individual Class Payment will be paid to each Class Member based on his or
16 her eligible Employment Terminations compared to the total Employment Terminations. Because
17 this method compensates Class Members based on the extent of their potential injuries, in that
18 Class Members who had more Employment Terminations with Defendant would have been
19 subject to more alleged violations, it is fair, adequate, and reasonable.

20 71. **Individual PAGA Payments.** I estimate that the average Aggrieved
21 Employee Individual PAGA Payment will be \$20.83. Plaintiff's Individual PAGA Payment,
22 her individual share of 25% of the PAGA Penalties, will be less than that of some absent
23 Aggrieved Employees. Under the Settlement, each Aggrieved Employee will receive a *pro rata*
24 distribution of 25% of the PAGA Penalties proportionate to the number of PAGA Employment
25 Terminations he or she had with Defendant during the PAGA Period, compared to the total of all
26 PAGA Employment Terminations of all Aggrieved Employees during the PAGA Period, as
27 reflected by Defendant's records. Defendant estimates that there are 48 Aggrieved Employees
28 who collectively had a total of 112 PAGA Employment Terminations for the PAGA Period.



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1 So, each PAGA Employment Termination from the PAGA Period has a value of approximately
2 \$8.93 (25% of \$4,000.00 in PAGA Penalties / 112 PAGA Employment Terminations = \$8.93). It
3 is anticipated that Plaintiff will receive an Individual PAGA Payment of approximately \$8.93 as
4 an Aggrieved Employee (1 Employment Terminations during the PAGA Period x \$8.93 PAGA
5 Employment Termination value = \$8.93) while the average estimated Individual PAGA Payment
6 to an Aggrieved Employee will be approximately \$20.83 (\$1,000.00, 25% of PAGA Penalties /
7 48 Aggrieved Employees during the PAGA Period = \$20.83 Individual PAGA Payment). Some
8 Aggrieved Employees – those who had more PAGA Employment Terminations during the PAGA
9 Period – will receive more, and some less. The lowest possible Individual PAGA Payment to an
10 Aggrieved Employee (i.e., to those who only had one PAGA Employment Termination in the
11 PAGA Period) will be approximately \$8.93.

12 ***Proposed Preliminary Approval Order***

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

25 73. **Identity of Administrator.** The proposed Preliminary Approval Order states
26 the name of the Administrator, and describes the nature of the services that the Administrator
27 will be required to perform, either directly or by reference to the Settlement Agreement.

28 74. **Exclusion Form.** The proposed Preliminary Approval Order provides that any



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

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

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

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

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



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

4 85. The Class Notice advises the Class Members of where they can find the
5 Settlement Agreement, by describing the full title and filing date either of the settlement
6 agreement and this declaration to which the Settlement Agreement is attached. The Class
7 Notice also states the address of the courthouse to which the case is assigned, and the address
8 of the court's website at which the case file can be viewed on-line.

9 86. The Class Notice describes the releases by Plaintiff and the Class Members.

10 87. The lawsuit includes a claim for civil penalties under PAGA. The Class Notice
11 defines PAGA. It states that Class Members may not opt out of the PAGA provisions of the
12 Settlement. The Class Notice also describes the terms of the settlement of the PAGA claim,
13 including who is an Aggrieved Employee. The Class Notice provides an estimate of the
14 individual Aggrieved Employee's share of 25% of the PAGA Penalties and advises
15 Aggrieved Employees that the payments will be reported on a Form 1099.

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

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

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

28 91. The information required to be provided by a Class Member on the Election



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1 Not To Participate form does not exceed the minimum information necessary to (i) identify
2 the person as a Class Member and (ii) contact the person to clarify any uncertainties.

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

5 ***Administrator Duties***

6 93. The duties of the Settlement Administrator are spelled out in the Settlement and in
7 the bid provided by Phoenix Class Action Administration Solutions, a true and correct copy of
8 which is attached hereto as **Exhibit 15**.

9 ***Administration Costs***

10 94. With regard to the settlement administration costs provision (Settlement ¶ 3.2.3),
11 it is reasonable. Before agreeing to Phoenix Class Action Administration Solutions, the Parties
12 sought and reviewed bids from three reputable third-party administrators: (A) ILYM Group, Inc.
13 = \$6,450.00; (B) Phoenix Class Action Administration Solutions = \$4,500.00; and C) CPT Group,
14 Inc. = \$8,500.00. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as
15 **Exhibit 16**. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit**
16 **17**. The bid provided by Phoenix Class Action Administration Solutions was the lowest. Thus, the
17 settlement administration costs provision should be given preliminary approval.

18 ***PAGA Provisions of the Settlement***

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

21 96. The Settlement provides that 25% of the PAGA Penalties shall be distributed
22 among all Aggrieved Employees, even those who opt out of the Class Settlement. See Settlement,
23 ¶¶ 1.35, 4.4.1.

24 97. The Settlement states as follows with regard to the release of the PAGA claim:
25 Release by Non-Participating Class Members Who Are Aggrieved Employees:

26 All Non-Participating Class Members who are Aggrieved Employees are deemed to
27 release, on behalf of themselves and their respective former and present representatives,
28 agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from
all claims for PAGA penalties that were alleged, or reasonably could have been alleged,



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1 based on the PAGA Period facts stated in the Operative Complaint and the PAGA
2 Notice and ascertained in the course of the Action, and any claims for civil penalties
3 arising from the non-timely payment of final wages due and owing during the PAGA
4 Period.

5 Settlement, ¶ 6.3.

6 98. The PAGA Release is limited to the Defendant named in the Operative
7 Complaint, together with Defendant's former and present directors, officers, shareholders,
8 owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries and affiliates. *See*
9 Settlement, ¶ 1.42 ("Released Parties").

10 *Notice of Settlement to the LWDA*

11 99. Pursuant to Labor Code § 2699(l)(2), Plaintiff has provided notice of this
12 settlement to the LWDA with the filing and service of this motion. A true and correct copy of
13 Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 18**.

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

16 Executed on Tuesday, September 23, 2025 at New York, New York.

17 

18 DAVID SPIVAK,
19 Declarant



27 SPIVAK LAW
28 EMPLOYEE RIGHTS

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EXHIBIT 1

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2 LAUREN R. DAVIS (SBN 294115)

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7 Attorneys for Plaintiff(s),

8 KIMBERLY DAWN VANDERMOST, and all others similarly situated

(Additional attorneys for parties on following page)

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 KIMBERLY DAWN VANDERMOST, on
14 behalf of herself and all others similarly situated,
15 and as an “aggrieved employee” on behalf of
16 other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 DYWIDAG SYSTEMS INTERNATIONAL,
20 USA, INC., a New York corporation; and DOES
1–50, inclusive,

21 *Defendant(s).*

Case No. 23STCV06697

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

Action filed: March 28, 2023

Dept: SSC 7, The Honorable
Samantha P. Jessner

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ATTORNEYS FOR DEFENDANT

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Attorneys for Defendant
DYWIDAG SYSTEMS INTERNATIONAL, USA, INC.

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Kimberly Dawn Vandermost (“Plaintiff”) and defendant Dywidag Systems
3 International, USA, Inc. (“Dywidag Systems International, USA, Inc.”). The Agreement refers to
4 Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit as set forth in her June 2, 2023 operative
7 First Amended Complaint against Dywidag Systems International, USA, Inc. captioned
8 “Kimberly Dawn Vandermost, on behalf of herself, and all others similarly situated, and as an
9 ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the Labor Code Private
10 Attorneys General Act of 2004, *Plaintiff(s)*, vs. Dywidag Systems International, USA, Inc., a New
11 York corporation; and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No. 23STCV06697
12 initiated on March 28, 2023 and pending in Superior Court of the State of California, County of
Los Angeles.

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

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

18 1.4. “Aggrieved Employee” means a person whose employment with Defendant in
19 California terminated during the PAGA Period.

20 1.5. “Class” means all persons whose employment with Defendant in California
21 terminated during the Class Period.

22 1.6. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm.

23 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
24 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
expenses, respectively, incurred to prosecute the Action.

25 1.8. “Class Data” means Class Member identifying information in Defendant’s
26 possession, including the Class Member’s name, last-known mailing address, Social Security
27 number, and number of Class Period Employment Terminations and PAGA Employment

1 Terminations.

2 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as
3 either a Participating Class Member or Non-Participating Class Member (including a Non-
4 Participating Class Member who qualifies as an Aggrieved Employee).

5 1.10. "Class Member Address Search" means the Administrator's investigation and
6 search for current Class Member mailing addresses using all reasonably available sources,
7 methods and means including, but not limited to, the National Change of Address database, skip
8 traces, and direct contact by the Administrator with Class Members.

9 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION
10 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
11 Class Members in English with a Spanish translation in the form, without material variation,
12 attached as Exhibit A and incorporated by reference into this Agreement.

13 1.12. "Class Period" means the period from March 28, 2020 to June 28, 2024.

14 1.13. "Class Representative" means the named Plaintiff in the operative complaint in the
15 Action seeking Court approval to serve as a Class Representative.

16 1.14. "Class Representative Service Payment" means the payment to the Class
17 Representative for initiating the Action and providing services in support of the Action.

18 1.15. "Court" means the Superior Court of California, County of Los Angeles.

19 1.16. "Defendant" means named Defendant Dywidag Systems International, USA, Inc.

20 1.17. "Defense Counsel" means Joshua B Wagner of Gordon Rees Scully Mansukhani,
21 LLP.

22 1.18. "Effective Date" means the date by when both of the following have occurred: (a)
23 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
24 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
25 Participating Class Member objects to the Settlement, the day following the Court's entry of
26 judgment so long as both Plaintiff and her counsel have provided a written waiver of their right
27 to appeal their fees, costs and/or incentive payment awards; or (b) if one or more Participating
28 Class Members objects to the Settlement and/or Class counsel / Plaintiff do not provide a written
waiver of their appeal rights, 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 two hundred seventy-five thousand dollars (\$275,000.00), 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.

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 Employment Terminations 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 Employment Terminations 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 Employment Termination Dispute form (Exhibit
3 C), and the Objection form (Exhibit D) in English with Spanish translations.

4 1.31. “PAGA Employment Termination” means any Employment Termination during
5 which an Aggrieved Employee terminated employment with Defendant in California during the
6 PAGA Period.

7 1.32. “PAGA Period” means the period from March 27, 2022 to June 28, 2024.

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

9 1.34. “PAGA Notice” means Plaintiff’s March 27, 2023 letter to Defendant and the
10 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

11 1.35. “PAGA Penalties” means the total amount of PAGA civil penalties (\$4,000.00) to
12 be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees
13 (\$1,000.00) and the 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

14 1.36. “Participating Class Member” means a Class Member who does not submit a valid
15 and timely Request for Exclusion from the Settlement.

16 1.37. “Plaintiff” means Kimberly Dawn Vandermost, the named plaintiff in the Action.

17 1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
18 of the Settlement.

19 1.39. “Preliminary Approval Order” means the proposed Order Granting Preliminary
20 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
21 attached as Exhibit E.

22 1.40. “Released Class Claims” means the claims being released as described in
23 Paragraph 6.2 below.

24 1.41. “Released PAGA Claims” means the claims being released as described in
25 Paragraph 6.3 below.

26 1.42. “Released Parties” means Defendant and each of its former and present directors,
27 officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns,
28 subsidiaries and affiliates.

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

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

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

1.46. “Employment Termination” means the termination of employment by Defendant in California during the Class Period, regardless of whether it was voluntary or involuntary. An Employment Termination Dispute form is attached as Exhibit C.

2. RECITALS.

2.1. On March 28, 2023, Plaintiff commenced this Action by filing a Complaint alleging a cause of action against Defendant for failure to timely pay wages. On June 2, 2023, Plaintiff filed a First Amended Complaint again alleging a cause of action against Defendant for failure to timely pay wages and additionally asserting claims for civil penalties under the Private Attorneys General Act relating to the putative failure to timely pay wages. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.

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

2.3. On December 21, 2023, the Parties participated in an all-day mediation presided over by neutral Phillip K. Cha. Mr. Cha engaged in substantial follow-up negotiation efforts, which ultimately led to this Agreement to settle the Action.

2.4. Prior to negotiating the Settlement, Plaintiff obtained, through formal and informal discovery, sample payroll records, written policies, the number of comparable employees, and related information. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801

1 and *Kullar v. Foot Locker Retail, 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 two hundred seventy-five thousand dollars (\$275,000.00) and no more
9 as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement
10 Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will
11 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
12 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
13 Gross Settlement Amount will revert to Defendant.

14 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
15 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
16 the Court in the Final Approval:

17 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
18 Representative of not more than ten thousand dollars (\$10,000.00) (in addition to any Individual
19 Class Payment and any Individual PAGA Payment the Class Representative is otherwise entitled
20 to receive as a Participating Class Member). Defendant will not oppose Plaintiff’s request for a
21 Class Representative Service Payment that does not exceed this amount. As part of the motion
22 for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court
23 approval for any Class Representative Service Payments no later than sixteen (16) court days
24 prior to the Final Approval Hearing. If the Court approves a Class Representative Service
25 Payment less than the amount requested, the Administrator will retain the remainder in the Net
26 Settlement Amount. The Administrator will pay the Class Representative Service Payment using
27 IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the
28 Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
33.33%, which is currently estimated to be ninety-one thousand, six hundred sixty-six dollars and

sixty-seven cents (\$91,666.67) and a Class Counsel Litigation Expenses Payment of not more than twelve thousand, five hundred dollars (\$12,500.00). Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed seven thousand dollars (\$7,000.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than seven thousand dollars (\$7,000.00), the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1. Tax Allocation of Individual Class Payments. 100.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). They are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any 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 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments

1 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

2 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
3 amount of four thousand dollars (\$4,000.00) to be paid from the Gross Settlement Amount, with
4 75% or three thousand dollars (\$3,000.00) allocated to the LWDA PAGA Payment and 25% or
5 one thousand dollars (\$1,000.00) allocated to the Individual PAGA Payments.

6 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
7 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00
8 by the total number of PAGA Period Employment Terminations of all Aggrieved Employees
9 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA
10 Period Employment Terminations. Aggrieved Employees assume full responsibility and liability
11 for any taxes owed on their Individual PAGA Payment.

12 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
13 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
14 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

14 **4. SETTLEMENT FUNDING AND PAYMENTS.**

15 4.1. Class Employment Terminations and Aggrieved Employee Employment
16 Terminations. Based on a review of its records to date, Defendant estimates there are 161 Class
17 Members who collectively had a total of 359 Employment Terminations, and 48 Aggrieved
18 Employees who collectively had a total of 112 PAGA Employment Terminations.

19 4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary
20 Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the
21 Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy
22 rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for
23 purposes of this Settlement and for no other purpose, and restrict access to the Class Data to
24 Administrator employees who need access to the Class Data to effect and perform under this
25 Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers
26 that the Class Data omitted class member identifying information and to provide corrected or
27 updated Class Data as soon as reasonably feasible. Without any extension of the deadline by
28 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

1 to missing or omitted Class Data.

2 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
3 Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) days
4 after the Effective Date.

5 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after
6 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all
7 Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
8 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
9 Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class
10 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class
11 Representative Service Payment shall not precede disbursement of Individual Class Payments
12 and Individual PAGA Payments.

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

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

1 by the Class Member prior to the void date.

2 4.4.3. For any Class Member whose Individual Class Payment check or
3 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
4 shall transmit the funds represented by such checks to the California Controller's Unclaimed
5 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
6 the requirements of California Code of Civil Procedure Section 384, subd. (b).

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

11 **5. [OMITTED]**

12 **6. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
13 Gross Settlement Amount, Plaintiff, Class Members, and Class Counsel will release claims
14 against all Released Parties as follows:

15 6.1 Plaintiff's Release. Plaintiff and her respective former and present spouses,
16 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
17 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
18 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
19 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
20 that were, or reasonably could have been, alleged based on facts contained in the Operative
21 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.3,
22 below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
23 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
24 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
25 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
26 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
27 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
28 notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

1
2 **A general release does not extend to claims that the creditor or releasing party does**
3 **not know or suspect to exist in his or her favor at the time of executing the release,**
4 **and that if known by him or her would have materially affected his or her settlement**
5 **with the debtor or Released Party.**

6 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:

7 All Participating Class Members, on behalf of themselves and their respective former
8 and present representatives, agents, attorneys, heirs, administrators, successors, and
9 assigns, release Released Parties from (i) all claims that were alleged, or reasonably
10 could have been alleged, based on the Class Period facts stated in the Operative
11 Complaint and ascertained in the course of the Action, including any claims for waiting
12 time penalties during the Class Period. Except as set forth in Section 6.3 of this
13 Agreement, Participating Class Members do not release any other claims, including
14 claims for vested benefits, wrongful termination, violation of the Fair Employment and
15 Housing Act, unemployment insurance, disability, social security, workers'
16 compensation or claims based on facts occurring outside the Class Period.

16 6.3 Release by Non-Participating Class Members Who Are Aggrieved
17 Employees:

17 All Non-Participating Class Members who are Aggrieved Employees are deemed to
18 release, on behalf of themselves and their respective former and present representatives,
19 agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from
20 all claims for PAGA penalties that were alleged, or reasonably could have been alleged,
21 based on the PAGA Period facts stated in the Operative Complaint and the PAGA
22 Notice and ascertained in the course of the Action, and any claims for civil penalties
23 arising from the non-timely payment of final wages due and owing during the PAGA
24 Period.

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

1 7.1 Defendant's Declaration in Support of Preliminary Approval. Within twenty-one
2 (21) days of the full execution of this Agreement, Defense Counsel will prepare and deliver to
3 Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts
4 relevant to any actual or potential conflicts of interest with the Administrator. In their
5 Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other
6 pending matter or action asserting claims that will be extinguished or adversely affected by the
7 Settlement.

8 7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
9 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
10 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
11 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
12 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
13 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
14 from the Administrator attaching its "not to exceed" bid for administering the Settlement and
15 attesting to its willingness to serve; competency; operative procedures for protecting the security
16 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
17 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
18 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
19 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
20 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
21 and/or the Administrator; (v) a signed declaration from Class Counsel attesting to its competency
22 to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA
23 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
24 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
25 subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to
26 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
27 potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient.
28 In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware
of any other pending matter or action asserting claims that will be extinguished or adversely
affected by the Settlement.

 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly

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

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

8. SETTLEMENT ADMINISTRATION.

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

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of providing reports to state and federal tax authorities.

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

8.4 Notice to Class Members.

8.4.1 No later than ten (10) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of

1 Class Members, PAGA Members, Class Employment Terminations, and PAGA Employment
2 Terminations in the Class Data.

3 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
4 twenty-one (21) days after receiving the Class Data, the Administrator will send to all Class
5 Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
6 the Notice Packet with Spanish translation, if applicable substantially in the forms attached to this
7 Agreement as **Exhibits A, B, C, and D**. The first page of the Class Notice shall prominently
8 estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment
9 payable to the Class Member, and the number of Employment Terminations and PAGA Employment
10 Terminations (if applicable) used to calculate these amounts. Before mailing Notice Packets, the
11 Administrator shall update Class Member addresses using the National Change of Address
12 database.

13 8.4.3 Not later than five (5) business days after the Administrator’s receipt of
14 any 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 8.4.4 The deadlines for Class Members’ written objections, Challenges to
21 Employment Terminations and/or Employment Terminations (disputes), and Requests for
22 Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) days otherwise
23 provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator
24 will inform the Class Member of the extended deadline with the re-mailed Notice Packet.

25 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or
26 otherwise discovers any persons who believe they should have been included in the Class Data
27 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
28 or by telephone, and in good faith. in an effort to agree on whether to include them as Class
Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
other Class Members, and the Administrator will send, via email or overnight delivery, a Class
Notice requiring them to exercise options under this Agreement not later than fourteen (14) days

1 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

2 8.5 Requests for Exclusion (Opt-Outs).

3 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
4 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
5 Exclusion not later than sixty (60) days after the Administrator mails the Notice Packet (plus an
6 additional fourteen (14) days for Class Members whose Notice Packet is re-mailed). A Request
7 for Exclusion is a letter from a Class Member or his/her representative that reasonably
8 communicates the Class Member's election to be excluded from the Settlement and includes the
9 Class Member's name, address and email address or telephone number. To be valid, a Request
10 for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. An
11 Election Not to Participate in Settlement form, attached as Exhibit B, may be used for this purpose
12 but is not required.

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

22 8.5.3 Every Class Member who does not submit a timely and valid Request for
23 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
24 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
25 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
26 Participating Class Member actually receives the Class Notice or objects to the Settlement.

27 8.5.4 Every Class Member who submits a valid and timely Request for
28 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
or have the right to object to the class action components of the Settlement. Aggrieved Employees
are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Employment Terminations. Each Class Member

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

14 8.7 Objections to Settlement.

15 8.7.1 Only Participating Class Members may object to the class action
16 components of the Settlement and/or this Agreement, including contesting the fairness of the
17 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
18 Litigation Expenses Payment and/or Class Representative Service Payment.

19 8.7.2 Participating Class Members may send written objections to the
20 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
21 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
22 Hearing. A Participating Class Member who elects to send a written objection to the
23 Administrator must do so not later than sixty (60) days after the Administrator's mailing of the
24 Notice Packet (plus an additional fourteen (14) days for Class Members whose Notice Packet was
25 re-mailed). An The Objection form attached as Exhibit D may be used for this purpose but is not
26 required.

27 8.7.3 Non-Participating Class Members have no right to object to any of the class
28 action components of the Settlement.

27 8.8 Administrator Duties. The Administrator has a duty to perform or observe all

1 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

2 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
3 establish and maintain and use an internet website to post information of interest to Class
4 Members including the date, time and location for the Final Approval Hearing and copies of the
5 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice
6 Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
7 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
8 Approval and the Judgment. The Administrator will also maintain and monitor an email address
9 and a toll-free telephone number to receive Class Member calls, faxes and emails.

10 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
11 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
12 later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion,
13 the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the
14 names and other identifying information of Class Members who have timely submitted valid
15 Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of
16 Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
17 Exclusion from Settlement submitted (whether valid or invalid).

18 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
19 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
20 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
21 Exclusion (whether valid or invalid) received, objections received, challenges to Employment
22 Terminations and/or Employment Terminations received and/or resolved, and checks mailed for
23 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly
24 Reports must include provide the Administrator’s assessment of the validity of Requests for
25 Exclusion and attach copies of all Requests for Exclusion and objections received.

26 8.8.4 Employment Termination Challenges. The Administrator has the authority
27 to address and make final decisions consistent with the terms of this Agreement on all Class
28 Member challenges over the calculation of Employment Terminations and/or Employment
Terminations. The Administrator’s decision shall be final and not appealable or otherwise
susceptible to challenge.

8.8.5 Administrator’s Declaration. Not later than fourteen (14) days before the

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

10 8.8.6 Final Report by Administrator. Within fourteen (14) days after the
11 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
12 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
13 identification number only of all payments made under this Agreement. At least fifteen (15) days
14 before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel
15 and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement
16 of all payments required under this Agreement. Class Counsel is responsible for filing the
17 Administrator's declaration in Court.

18 **9. CLASS SIZE ESTIMATES.** Based on its records, Defendant estimates that, as of the
19 date of this Settlement Agreement, (1) there were 161 Class Members and 359 Total Employment
20 Terminations during the Class Period and (2) there were 48 Aggrieved Employees who had 112
21 Employment Terminations during the PAGA Period.

22 **10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for
23 Exclusion identified in the Exclusion List exceeds five percent (5%) of the total of all Class
24 Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties
25 agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect
26 whatsoever, and that neither Party will have any further obligation to perform under this
27 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
28 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the
Court of its election to withdraw not later than ten (10) days after the Administrator sends the

1 final Exclusion List to Defense Counsel; late elections will have no effect.

2
3 **11. MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the
4 calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the
5 Settlement that includes a request for approval of the PAGA settlement under Labor Code section
6 2699, subd. (1), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion
7 for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not
8 later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense
9 Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve
any disagreements concerning the Motion for Final Approval.

10 11.1 Response to Objections. Each Party retains the right to respond to any objection
11 raised by a Participating Class Member, including the right to file responsive documents in Court
12 no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
accepted by the Court.

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

20 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
21 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
22 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.

23 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
24 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
25 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
26 respective counsel, and all Participating Class Members who did not object to the Settlement as
27 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to

1 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
2 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
3 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
4 Parties' obligations to perform under this Agreement will be suspended until such time as the
5 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
the amount of the Net Settlement Amount.

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

15
16 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
17 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
18 amended judgment.

19 **13. ADDITIONAL PROVISIONS.**

20 13.1 No Admission of Liability, Class Certification or Representative Manageability
21 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
22 claims. Nothing in this Agreement is intended or should be construed as an admission by
23 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant
24 has any liability for any claims asserted; nor should it be intended or construed as an admission
25 by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class
26 certification and representative treatment is for purposes of this Settlement only. If, for any reason
27 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant
reserves the right to contest certification of any class for any reasons, and Defendant reserves all

1 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
2 certification on any grounds available and to contest Defendant's defenses. The Settlement, this
3 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
4 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
Settlement and this Agreement).

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

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

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

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

1 covenants, or inducements made to or by any Party.

2 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
3 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
4 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
5 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
6 terms of this Agreement including any amendments to this Agreement.

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

14 13.7 No Prior Assignments. The Parties separately represent and warrant that they
15 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
16 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
17 action, or right released and discharged by the Party in this Settlement.

18 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
19 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
20 Settlement be relied upon as such within the meaning of United States Treasury Department
21 Circular 230 (31 CFR Part 10, as amended) or otherwise.

22 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
23 amended, modified, changed, or waived only by an express written instrument signed by all
24 Parties or their representatives, and approved by the Court.

25 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
26 inure to the benefit of, the successors of each of the Parties.

27 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
28 be governed by and interpreted according to the internal laws of the state of California, without
regard to conflict of law principles.

13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
preparation of this Agreement. This Agreement will not be construed against any Party on the

1 basis that the Party was the drafter or participated in the drafting.

2 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
3 entered during Action and in this Agreement relating to the confidentiality of information shall
4 survive the execution of this Agreement.

5 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
6 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
7 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
8 connection with the Settlement, may be used only with respect to this Settlement, and no other
9 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
10 or rule of court. Not later than ninety (90) days after the date when the Court discharges the
11 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
12 funds, Class Counsel shall destroy, all paper and electronic versions of Class Data received from
13 Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant
14 makes a written request to Class Counsel for the return, rather than the destructions, of Class
15 Data.

16 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
17 is inserted for convenience of reference only and does not constitute a part of this Agreement.

18 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
19 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
20 weekend or federal legal holiday, such date or deadline shall be on the first business day
21 thereafter.

22 13.17 Notice. All notices, demands or other communications between the Parties in
23 connection with this Agreement will be in writing and deemed to have been duly given as of the
24 third business day after mailing by United States mail, or the day sent by email or messenger,
25 addressed as follows:

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

1 To Defendant:
2 Joshua B Wagner, Esq.
3 Gordon Rees Scully Mansukhani, LLP
4 633 W 5th St, 52nd Floor
5 Los Angeles, CA 90071-2086
6 jwagner@grsm.com

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

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1 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
2 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
3 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
4 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
5 process.

6 05 / 30 / 2025

7 Dated: _____, 2025

By: _____


KIMBERLY DAWN VANDERMOST

10 Dated: _____, 2025

By: _____

MIKE KELLEY, President
Dywidag Systems International, USA,
Inc.

13 THE SPIVAK LAW FIRM

14 05 / 29 / 2025

15 Dated: _____, 2025

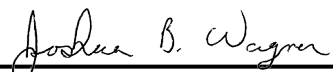
By: _____


DAVID GLENN SPIVAK, Attorneys
for Plaintiff, KIMBERLY DAWN
VANDERMOST, and all others
similarly situated

20 GORDON REES SCULLY MANSUKHANI,
21 LLP

22 Dated: June 02, 2025

By: _____


JOSHUA B WAGNER, Attorneys for
Defendant, DYWIDAG SYSTEMS
INTERNATIONAL, USA, INC.

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

Dated: _____, 2025

By: _____
KIMBERLY DAWN VANDERMOST

Dated: June 2, 2025

Signed by:
Mike Kelley
MIKE KELLEY, President
Dywidag Systems International, USA, Inc.

THE SPIVAK LAW FIRM

Dated: _____, 2025

By: _____
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, KIMBERLY DAWN
VANDERMOST, and all others
similarly situated

GORDON REES SCULLY MANSUKHANI,
LLP

Dated: _____, 2025

By: _____
JOSHUA B WAGNER, Attorneys for
Defendant, DYWIDAG SYSTEMS
INTERNATIONAL, USA, INC.

EXHIBIT A

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

(case name: *Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc. and*
number 23STCV06697)

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Dywidag Systems International, USA, Inc. (“Defendant”) for alleged wage and hour violations. The Action was filed by one of Defendant’s former employees Kimberly Dawn Vandermost (“Plaintiff”) and seeks payment of (1) statutory waiting time penalties for a class of all persons whose employment with Defendant in California terminated during the Class Period (March 28, 2020 to June 28, 2024); and (2) civil penalties under the California Private Attorney General Act (“PAGA”) for all persons whose employment with Defendant in California terminated during the PAGA Period (March 27, 2022 to June 28, 2024) (“Aggrieved Employees”).

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Class Period Employment Termination is <<\$increment type value>> and of a PAGA Employment Termination 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 have a PAGA Employment Termination.

The above estimates are based on Defendant’s records showing that **you had <<__>> Employment Termination(s)** during the Class Period and **you had <<__>> Employment Termination(s)** during the PAGA Period. If you believe that you had more Employment Terminations during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much

of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant in California and had an employment termination during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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 The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

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 Employment Termination / Employment Terminations Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Employment Terminations you had during the Class Period and how many Employment Terminations you had during the PAGA Period, respectively. The number Class Period Employment Terminations and number of PAGA Period Employment Terminations you had 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 Employment Terminations Dispute form for this purpose.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failure to timely pay final wages. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm (“Class Counsel.”)

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

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

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to

resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

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

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

A. Gross Settlement Amount. Defendant Will Pay \$275,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment if appeal rights are waived, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

1. Attorney Fees and Costs. Up to \$91,666.67 (33.33% of the Gross Settlement to Class Counsel for attorneys’ fees and up to \$12,500.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

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

3. Administration Expenses. Up to \$7,000.00 to the Administrator for services administering the Settlement.

4. PAGA Penalties. Up to \$4,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees

based on their PAGA Period Employment Terminations.

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

Based on its records, Defendant estimated that, as of the date of the Settlement, (1) there are 161 Class Members and 359 total Employment Terminations during the Class period and (2) there were 48 Aggrieved Employees who had 112 Employment Terminations during the PAGA Period.

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 Employment Terminations.

D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve 100.00% of the payments to Class Members to interest and penalties (“Non-Wage Portion.”). The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

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

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

F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out. The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. You may use the enclosed Election Not To Participate In Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class Members) will not receive

Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

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

G. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to 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, Phoenix Class Action Administration Solutions (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Employment Terminations, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

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

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

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

J. The PAGA Release. After the Court’s judgment is final, and Defendant has paid the Gross Settlement, all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are

Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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

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

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

You need to support your challenge by submitting copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Employment Terminations based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Employment Termination challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

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

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

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

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

Email, fax, or mail a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. You may use the enclosed Election Not To Participate In Settlement form for this purpose. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Kimberly Dawn Vandermost vs. Dywidag Systems International, USA, Inc.*, Case No. 23STCV06697, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. You should send your Request for Exclusion to the Administrator by email, fax, or send by regular U.S. mail. **The Administrator must be sent your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information. If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

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

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Kimberly Dawn Vandermost vs. Dywidag Systems International, USA, Inc.*, case no. 23STCV06697, and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information. You may use the enclosed Objection form for this purpose. You should send your objection to the Administrator by email, fax, or send by regular U.S. mail.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department SSC 7 of the Los Angeles Superior Court, located at Spring Street Courthouse, 312 N Spring St., Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>> (<https://www.<<CourtVirtualAppearanceLink>>>). Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. 23STCV06697. You can also make an appointment to personally review court documents in the Clerk's Office at the Spring Street Courthouse by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

Class Counsel:

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

Administrator:

Name of Company: Phoenix Class Action Administration Solutions
Email Address: _____
Mailing Address: _____
Telephone: _____
Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

11. WHAT IF I CHANGE MY ADDRESS?

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

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EXHIBIT B

Vandermost v. Dywidag Systems International, USA, Inc.
Superior Court of the State of California, County of Los Angeles
Case No. 23STCV06697

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

ONLY COMPLETE THIS FORM IF YOU DO NOT WANT TO BE A PARTICIPATING CLASS MEMBER AND RECEIVE YOUR PRO RATA SHARE OF THIS CLASS ACTION SETTLEMENT. 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.

HOWEVER, IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, ONE OPTION IS TO COMPLETE AND SIGN THIS FORM AND RETURN IT TO THE ADMINISTRATOR BY EMAIL, FAX, OR U.S. MAIL. IF RETURNED BY U.S. MAIL, IT MUST BE POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Vandermost v. Dywidag Systems International, USA, Inc. Class Action Administrator
c/o _____

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

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

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

Dated: ____.
(Signature)

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EXHIBIT C

Superior Court of The State of California
for the County of Los Angeles
Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc., Case No.
23STCV06697

XX - XX -

1 what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE
2 DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail with proof of the
3 submission date (such as a postmark or delivery service date stamp). You may use this
4 Employment Terminations Dispute form for this purpose. You must also send any documents or
5 other information that you contend supports your belief that the information set forth above is
6 incorrect. The Administrator will resolve any dispute based upon its review of both Defendant's
7 records and any information you provide. Please be advised that the information on this
8 Employment Terminations Dispute Form is presumed to be correct unless the documents you
9 submit are company records from Defendant.

10 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF CLASS**
11 **PERIOD EMPLOYMENT TERMINATIONS OR PAGA EMPLOYMENT**
12 **TERMINATIONS, YOU DO NOT NEED TO TAKE ANY ACTION**
13 **WITH RESPECT TO THIS FORM.**

EXHIBIT D

OBJECTION FORM

Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc.
Superior Court of the State California, County of Los Angeles
Case No. 23STCV06697

Please verify and/or complete any missing identifying information:

CPT ID: <<CPT ID>>

<<Name>>

<<Address1>>

<<Address2>>

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

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (____) ____ - ____

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

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

The Court will consider your objection at the Final Approval Hearing if you timely submit it. Include any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) that you would like the Court to consider. However, you may speak to the Court at the final approval hearing regardless of whether you submit a timely objection.

[] I OBJECT to the *Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc.* Settlement on the following grounds (if additional space necessary, please include additional sheets of 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>>:

Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc.
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 LOS ANGELES**
10 **(UNLIMITED JURISDICTION)**

11 KIMBERLY DAWN VANDERMOST, on
12 behalf of herself and all others similarly situated,
13 and as an “aggrieved employee” on behalf of
14 other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

15 *Plaintiff(s),*

16 vs.

17 DYWIDAG SYSTEMS INTERNATIONAL,
18 USA, INC., a New York corporation; DOES 1–
50, inclusive,

19 *Defendant(s).*
20

Case No. 23STCV06697

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

Action filed: March 28, 2023
Dept: SSC 7, The Honorable
Samantha P. Jessner

21
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23 The Motion of Plaintiff Kimberly Dawn Vandermost (hereafter referred to as “Plaintiff”)
24 for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
25 The Honorable Samantha P. Jessner, judge presiding. The Court having considered the Motion, the
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Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement Agreement”), and other supporting papers, HEREBY ORDERS THE FOLLOWING:

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

2. For purposes of this Preliminary Approval Order, the “Settlement Class” means all persons whose employment with Defendant in California terminated during the Class Period (collectively “Class Members”). The “Class Period” shall mean the period of time from March 28, 2020 through June 28, 2024.

3. Based on its records, Defendant estimates that, as of the date of the Settlement Agreement, (1) there are 161 Class Members and 359 total Employment Terminations during the Class Period and (2) there were 48 Aggrieved Employees who had 112 Employment Terminations during the PAGA Period.

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

1 Participating Class Member objects to the Settlement and Plaintiff and her counsel expressly waive
2 their rights to appeal in writing, the day the Court enters Judgment; (b) if one or more Participating
3 Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal
4 from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court
5 affirms the Judgment and issues a remittitur.

6
7 5. This action is provisionally certified pursuant to section 382 of the California Code
8 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
9 purposes of settlement only with respect to the proposed Settlement Class.

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

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

the Class Data.

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

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

10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s contact information is Joshua B Wagner, Esq., Gordon Rees Scully Mansukhani, LLP, 633 W 5th St, 52nd Floor, Los Angeles, CA, 90071-2086.

11. The deadlines for Class Members’ written objections, Challenges to Employment

Terminations (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Notice Packet.

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

13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must 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.

14. The Administrator may not reject a Request for Exclusion as invalid because it fails

1 to contain all the information specified in the Class Notice. The Administrator shall accept any
2 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
3 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 Administrator
6 may demand additional proof of the Class Member's identity. The Administrator's determination
7 of authenticity shall be final and not appealable or otherwise susceptible to challenge.
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9 15. Every Class Member who does not submit a timely and valid Request for Exclusion
10 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
11 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
12 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement Agreement, regardless of
13 whether or not the Participating Class Member actually receives the Class Notice or objects to the
14 Settlement.
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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. Class Members release all claims
19 for civil penalties that could have been sought by the California Labor & Workforce
20 Development Agency ("LWDA") and/or the California Labor Commissioner for the violations
21 identified in Plaintiff's pre-filing letter to the LWDA; however, the Settlement does not release the
22 individual claims of any Non-Participating Class Member.
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24 17. Challenges to Calculation of Employment Terminations. Each Class Member shall
25 have 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
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Members whose Notice Packet is re-mailed) to challenge the number of Class Employment Terminations and/or PAGA Employment Terminations (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. An Employment Termination 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 U.S. 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 Employment Terminations information 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 Class Period Employment Terminations and/or PAGA Employment Terminations shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Class Period Employment Terminations and/or PAGA Employment Terminations to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

18. Objections to Settlement. Only Participating Class Members may object to the class action components of the Settlement 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.

19. 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 Objection form attached as Exhibit D may be used for this purpose but is not required.

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 this Order, the Election Not to Participate in Settlement form in substantially the form attached as Exhibit B to this Order, the Employment Terminations Dispute form in substantially the form attached as Exhibit C to this Order, and the Objection form in substantially the form attached as Exhibit D to this Order.

23. The Court approves, for settlement purposes only, David Glenn Spivak of The Spivak Law Firm as Class Counsel.

24. The Court approves, for settlement purposes only, Kimberly Dawn Vandermost as the Class Representative.

25. The Court approves Phoenix Class Action Administration Solutions 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 SSC 7 of the Superior Court for the State of California, County of Los Angeles, located at the Spring Street Courthouse, 312 N Spring St., Los Angeles, CA 90012 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Service 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

1 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
2 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
3 litigation, as more specifically set forth in the Settlement.

4 31. The Court expressly reserves the right to adjourn or continue the Final Approval
5 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
6 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
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8 **IT IS SO ORDERED.**

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11 **DATE**

**THE HONORABLE SAMANTHUA P.
JESSNER
SUPERIOR COURT JUDGE**

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

KIMBERLY DAWN VANDERMOST, on
behalf of herself and all others similarly situated,
and as an “aggrieved employee” on behalf of
other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

DYWIDAG SYSTEMS INTERNATIONAL,
USA, INC., a New York corporation; DOES 1–
50, inclusive,

Defendant(s).

Case No. 23STCV06697

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

Action filed: March 28, 2023
Dept: SSC 7, The Honorable
Samantha P. Jessner

20 This matter came on for hearing on ____ at ____m. in Department SSC 7 of the above-
21 captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant
22 to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action
23 Settlement and Release of Claims (the “Settlement”) filed herewith which provides for a Gross
24 Settlement Amount (“GSA”) of up to \$275,000.00 in compromise of all disputed claims on behalf
25 of all persons whose employment with Defendant in California terminated during the Class Period
26 of this Settlement, March 28, 2020 through June 28, 2024 (“Settlement Class Period”). All
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capitalized terms used herein shall have the same meaning as defined in the Settlement.

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

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

2. For purposes of this Final Order and Judgment, the Class Members are all persons

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

1 whose employment with Defendant in California terminated during the Class Period during the
2 period of March 28, 2020 to June 28, 2024 (“Settlement Class Period”).

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

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

17 **PAGA Release.** Plaintiff releases all claims for civil penalties that could have been
18 sought by the Labor Commissioner for the violations identified in Plaintiff’s pre-filing letter to
19 the LWDA; the Settlement does not release the individual claims of any Non-Participating Class
20 Member.
21

22 **“Released Claims”** shall mean all claims stated in the Operative Complaint and based
23 solely on the facts alleged in the Operative Complaint. **“Released Parties”** shall mean Defendant
24 and any related entities, its officers, directors, employees and agents.

25 2. The Court further finds and determines that the terms of the Settlement are fair,
26 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
27

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

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

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

21 a. Class Counsel fees & costs of \$91,666.67 in attorneys’ fees and \$12,500.00
22 in litigation costs to Class Counsel;

24 b. \$10,000.00 as a Class Representative Service Payment award payable to
25 Plaintiff Kimberly Dawn Vandermost for **her** service as a Class Representative;

26 c. \$7,000.00 in costs of the Administrator payable to Phoenix Class Action
27

Administration Solutions for its services as the Administrator; and

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

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

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

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

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

1 the Residue at the legal rate of interest from the date of entry of the initial judgement to the
2 California Unclaimed Property Fund.

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

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

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

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

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

25 16. The Settlement is not an admission by Defendant nor is this Final Order and
26
27

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

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

18 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
19
20

21 _____
22 **DATE**

23 **THE HONORABLE SAMANTHA P.**
24 **JESSNER**
25 **SUPERIOR COURT JUDGE**
26
27
28

EXHIBIT 2



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

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spivaklaw.com Web

SENT BY ELECTRONIC SUBMISSION

March 27, 2023

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

Re: Kimberly Dawn Vandermost / Dywidag Systems Employers

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Kimberly Dawn Vandermost (hereafter “Vandermost” or “Complainant”) provides notice that Dywidag Systems International, USA, Inc., a New York corporation, and related entities (collectively “the Dywidag Systems Employers” or “the Employers”) violated her rights and those of all other individuals the Dywidag Systems Employers have employed or otherwise contracted with in California as Regional Contract Managers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code section 203 and other Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Vandermost hereby provides this notice to the Labor & Workforce Development Agency and the Dywidag Systems Employers and their agents and representatives.

At all relevant times, the Dywidag Systems Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies throughout California. Vandermost and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///

///

Statement of Facts

On approximately October 13, 2003, the Dywidag Systems Employers began to employ Vandermost in Long Beach in the position of salaried Regional Contract Manager. The Dywidag Systems Employers continuously employed her in that capacity until on or about April 4, 2022 when her employment ended.

At all relevant times, the Dywidag Systems Employers issued wages to Vandermost and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis. At all relevant times, the Dywidag Systems Employers classified Vandermost and all other Aggrieved Employees as exempt employees entitled to some protections of the Labor Code and the Wage Order.

The Dywidag Systems Employers failed to timely pay Vandermost and all of the other Aggrieved Employees all earned wages at the conclusion of employment. The Dywidag Systems Employers failed to promptly pay Vandermost and all other Aggrieved Employees their final wages within the time limits prescribed by Labor Code section 203. The Dywidag Systems Employers failed to pay Vandermost and all other Aggrieved Employees their final wages at the time of termination of employment.

For the reasons stated herein, Vandermost alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees: The Dywidag Systems Employers willfully failed to timely pay Vandermost and all other Aggrieved Employees all earned wages when their employment ended.

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

The Wage Order

The Wage Order applies to “all persons employed in professional, technical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis. . . .” Wage Order, § 1. The Wage Order defines “Professional, Technical, Clerical, Mechanical, and Similar Occupations” to include “professional, semiprofessional, managerial, supervisory, and mechanical occupations . . . their

assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Wage Order, § 2(O).

At all relevant times during the applicable limitations period, the Dywidag Systems Employers, Vandermost, and all of the Aggrieved Employees, were covered by the Wage Order because the Dywidag Systems Employers operated, and Vandermost and all of the Aggrieved Employees worked for, the Dywidag Systems Employers as Regional Contract Managers, their assistants, and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Vandermost and all other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

The Dywidag Systems Employers failed to pay Vandermost and all other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Dywidag Systems Employers, including all regular wages, accrued vacation, accrued sick leave, and other

compensation. By failing to pay Vandermost and all of the other Aggrieved Employees as set forth above at the end of employment, the Dywidag Systems Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all other Aggrieved Employees, Vandermost seeks civil penalties from the Dywidag Systems 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 Kimberly Dawn Vandermost will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Kimberly Dawn Vandermost

LWDA / The Dywidag Systems Employers

Re: Kimberly Dawn Vandermost

March 27, 2023

Page 5 of 5

John F. Kuentler, Esq.
Barnes & Thornburg LLP
2029 Century Park East, Suite 300
Los Angeles, CA 90067
jkuentler@btlaw.com

EXHIBIT 3

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Yvette Palazuelos

Electronically FILED by Superior Court of California, County of Los Angeles on 03/28/2023 09:55 AM David W. Slayton, Executive Officer/Clerk of Court, by D. Jackson Aubry, Deputy Clerk

1 DAVID G. SPIVAK (SBN 179684)

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2 JENICA LEONARD (SBN 245366)

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3 THE SPIVAK LAW FIRM

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5 West Hollywood, CA 90069

6 Telephone: (213) 725-9094

7 Facsimile: (213) 634-2485

8 Attorneys for Plaintiff(s),

KIMBERLY DAWN VANDERMOST, and all others similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**11 **FOR THE COUNTY OF LOS ANGELES**12 **(UNLIMITED JURISDICTION)**13 KIMBERLY DAWN VANDERMOST, on
14 behalf of herself and all others similarly situated,
and the general public,15 *Plaintiff,*16
17 vs.18 DYWIDAG SYSTEMS INTERNATIONAL,
19 USA, INC., a New York corporation; and DOES
20 1-50, inclusive,21 *Defendant(s).*CASE NO. **23STCV06697****CLASS ACTION****COMPLAINT FOR WAITING TIME
PENALTIES (LAB. CODE § 203)****JURY TRIAL DEMANDED**SPIVAK LAW
EMPLOYEE RIGHTSMail:
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1 Plaintiff, Kimberly Dawn Vandermost (hereafter “Plaintiff” or “Vandermost”), on behalf
2 of herself and all others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants Dywidag Systems International,
7 USA, Inc., a New York corporation, and Does 1 through 50, inclusive (collectively
8 “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’ failure to timely pay wages upon termination of
12 employment. Accordingly, Plaintiff now seeks to recover statutory penalties, attorneys’ fees,
13 costs, and related relief through this class action.

14 **II. THE PARTIES**

15 3. Plaintiff Kimberly Dawn Vandermost is a resident of California.

16 4. Defendant Dywidag Systems International, USA, Inc. is a corporation organized
17 and existing under the laws of New York and is also a citizen of California based on Plaintiff’s
18 information and belief.

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

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

7. At all relevant times, in perpetrating the acts and omissions alleged herein,
Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack



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1 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
2 Members or otherwise complying with their rights in accordance with applicable California labor
3 laws as alleged herein.

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

7 **III. CLASS ALLEGATIONS**

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

13 10. **Class Definition:** The Class is defined as follows: All persons Defendants
14 employed in California at any time during the period beginning three years prior to the filing of
15 this action and ending on the date that final judgment is entered in this action (“Class” or “Class
Members”).

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

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

23 13. **Commonality and Predominance:** Common questions of law and fact exist as to
24 all Class Members and predominate over any questions which affect only individual Class
25 Members. These questions include, but are not limited to: Whether Defendants willfully failed to
26 timely pay final wages to Plaintiff and the Class.

27 14. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.
28 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



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Code, the Wage Order, and the Business and Professions Code.

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

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

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

IV. **STATEMENT OF FACTS**

18. The Wage Order applies to "all persons employed in professional, technical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis..." Wage Order, § 1. The Wage Order defines "Professional, Technical, Clerical, Mechanical, and Similar Occupations" to include:

professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations . . .
[And] their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations.

Wage Order, § 2(O). At all relevant times during the applicable limitations period, the Defendants, Vandermost, and all of the Class Members were covered by the Wage Order because



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Vandermost and all of the Class Members worked for the Defendants as Regional Contract managers, their assistants, and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Vandermost and all of the other Class Members are entitled to the protections the Wage Order provides.

19. On approximately October 13, 2003, the Defendants began to employ Vandermost in Long Beach in the position of salaried Regional Contract Manager. The Defendants continuously employed her in that capacity until on or about April 4, 2022 when her employment ended.

20. At all relevant times, the Defendants issued wages to Vandermost and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them a salary.

21. At all relevant times, the Defendants also failed to timely pay Vandermost and all of the other Class Members all earned wages as described above during and at the conclusion of employment. The Defendants failed to promptly pay Vandermost and all other Class Members with their final wages within the time limits prescribed by Labor Code section 203. Defendants failed to pay her final until May 5, 2022.

22. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practices and policies, Plaintiff and the Class Members were not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

Lab. Code §§ 201, 202, and 203

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

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

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

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

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



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72-hours' notice before quitting are due and payable within 72 hours.

27. The Defendants failed to pay Vandermost and all other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Defendants, including all earned wages, all accrued vacation time, all accrued sick time, and related compensation.

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

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

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

V. PRAYER FOR RELIEF

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

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

B. An order that Plaintiff be appointed class representative;

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

D. Statutory penalties, including waiting time penalties;

E. Declaratory relief;

F. Pre-judgment interest;

G. Costs of suit;

H. Reasonable attorneys' fees; and

I. Such other relief as the Court deems just and proper.

///

///



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VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 28, 2023

By:



DAVID G. SPIVAK,
JENICA P. LEONARD, Attorneys for
Plaintiff(s), KIMBERLY DAWN
VANDERMOST, and all others
similarly situated



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EXHIBIT 4

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Attorneys for Plaintiff(s),
KIMBERLY DAWN VANDERMOST, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)**

KIMBERLY DAWN VANDERMOST, on
behalf of herself and all others similarly situated,
and the general public, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” and the State of California under the
Labor Code Private Attorneys General Act of
2004,

Plaintiff,

vs.

DYWIDAG SYSTEMS INTERNATIONAL,
USA, INC., a New York corporation; and DOES
1-50, inclusive,

Defendant(s).

FILED
Superior Court of California
County of Los Angeles

06/02/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

Case No. 23STCV06697

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
WAITING TIME PENALTIES (LAB.
CODE § 203) AND CIVIL PENALTIES
(LAB. CODE §§ 2898, et seq.)**

JURY TRIAL DEMANDED



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1 Plaintiff, Kimberly Dawn Vandermost (hereafter “Plaintiff” or “Vandermost”), on behalf
2 of herself and all others similarly situated, the general public, and as an “aggrieved employee”
3 on behalf of other “aggrieved employees” and the State of California under the Labor Code
4 Private Attorneys General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Dywidag Systems
9 International, USA, Inc., a New York corporation, and Does 1 through 50, inclusive (collectively
“Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
11 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
12 relief. These claims are based on Defendants’ failure to timely pay wages upon termination of
13 employment. Accordingly, Plaintiff now seeks to recover statutory and civil penalties, attorneys’
14 fees, costs, and related relief through this class action.

15 **II. THE PARTIES**

16 3. Plaintiff Kimberly Dawn Vandermost is a resident of California. At all relevant
17 times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations
§ 11050 and an “aggrieved employee” within the meaning of Labor Code § 2699(c).

18 4. Defendant Dywidag Systems International, USA, Inc. is a corporation organized
19 and existing under the laws of New York and is also a citizen of California based on Plaintiff’s
20 information and belief.

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

26 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
27 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
28 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act



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1 within the course and scope of such agency, employment, direction and control, and with the
2 approval and ratification of each of the other Defendants.

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

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

12 **III. CLASS ALLEGATIONS**

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

18 10. **Class Definition:** The Class is defined as follows: All persons Defendants
19 employed in California at any time during the period beginning three years prior to the filing of
20 this action and ending on the date that final judgment is entered in this action (“Class” or “Class
21 Members”).

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

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

13. **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: Whether Defendants willfully failed to



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1 timely pay final wages to Plaintiff and the Class.

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

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

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

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

24 **IV. STATEMENT OF FACTS**

25 18. The Wage Order applies to "all persons employed in professional, technical,
26 mechanical, and similar occupations whether paid on a time, piece rate, commission, or other
27 basis..." Wage Order, § 1. The Wage Order defines "Professional, Technical, Clerical,
28 Mechanical, and Similar Occupations" to include:

professional, semiprofessional, managerial, supervisory, laboratory,
research, technical, clerical, office work, and mechanical occupations . . .



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[And] their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations.

Wage Order, § 2(O). At all relevant times during the applicable limitations period, the Defendants, Vandermost, and all of the Class Members were covered by the Wage Order because Vandermost and all of the Class Members worked for the Defendants as Regional Contract Managers, their assistants, and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Vandermost and all of the other Class Members are entitled to the protections the Wage Order provides.

19. On approximately October 13, 2003, the Defendants began to employ Vandermost in Long Beach in the position of salaried Regional Contract Manager. The Defendants continuously employed her in that capacity until on or about April 4, 2022 when her employment ended.

20. At all relevant times, the Defendants issued wages to Vandermost and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them a salary.

21. At all relevant times, the Defendants also failed to timely pay Vandermost and all of the other Class Members all earned wages as described above during and at the conclusion of employment. The Defendants failed to promptly pay Vandermost and all other Class Members with their final wages within the time limits prescribed by Labor Code section 203. Defendants failed to pay her final until May 5, 2022.

22. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practices and policies, Plaintiff and the Class Members were not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

Lab. Code §§ 201, 202, and 203

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

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

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

25. Labor Code § 201 provides that all earned and unpaid wages of an employee who



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1 is discharged are due and payable immediately at the time of discharge.

2 26. Labor Code § 202 provides that all earned and unpaid wages of an employee who
3 quits after providing at least 72-hours' notice before quitting are due and payable at the time of
4 quitting and that all earned and unpaid wages of an employee who quits without providing at least
5 72-hours' notice before quitting are due and payable within 72 hours.

6 27. The Defendants failed to pay Vandermost and all other Class Members whose
7 employment ended all of the earned but unpaid wages described above by the conclusion of their
8 employment with Defendants, including all earned wages, all accrued vacation time, all accrued
9 sick time, and related compensation.

10 28. By failing to pay such earned wages to Plaintiff and the Class Members at the time
11 of termination, Defendants failed to timely pay them all earned and unpaid wages in violation of
12 Labor Code § 201 or § 202.

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

18 30. Pursuant to Labor Code § 203, Plaintiff seeks 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 **SECOND CAUSE OF ACTION**

22 **CIVIL PENALTIES**

23 **Lab. Code §§ 2698, et seq.**

24 **(By Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California,**
25 **against all Defendants)**

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

27 32. The "Aggrieved Employees" are all members of the Class defined above who
28 Defendants employed during the period beginning March 27, 2022, and ending on the date that
final judgment is entered in this action.

33. During the applicable time period, Defendants violated California Labor Code §§
201, 202, and 203.



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

4 35. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the
5 Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants'
6 violations of California Labor Code §§ 201, 202, and 203 during the applicable limitations period
7 in the following amounts: 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
Code § 2699(f)(2)).

10 36. Plaintiff has complied with the procedures for bringing suit specified in California
11 Labor Code § 2699.3. By letter dated March 27, 2023, Plaintiff filed written notice online with
12 the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified
13 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
14 violated, including the facts and theories to support the alleged violations. A true and correct
15 copy of the notice to the LWDA dated March 27, 2023 is attached as Exhibit A. Plaintiff
16 submitted her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take
17 action in response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates
18 that the LWDA will provide written notice to Plaintiff informing her that it does not intend to
investigate these allegations.

19 37. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
20 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
21 connection with their claims for civil penalties.

22 **V. PRAYER FOR RELIEF**

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

- 25 A. An order that the action be certified as a class action with respect to
26 Plaintiff's claims for violations of California law;
27 B. An order that Plaintiff be appointed class representative;
28 C. An order that counsel for Plaintiff be appointed class counsel;
D. Statutory penalties, including waiting time penalties;



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- 1 E. Civil penalties;
2 F. Declaratory relief;
3 G. Pre-judgment interest;
4 H. Costs of suit;
5 I. Reasonable attorneys' fees; and
6 J. Such other relief as the Court deems just and proper.

7 **VI. DEMAND FOR JURY TRIAL**

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

10 Respectfully submitted,

11 THE SPIVAK LAW FIRM

12 Dated: June 1, 2023

13 By: 

14 DAVID G. SPIVAK,
15 JENICA P. LEONARD, Attorneys for
16 Plaintiff(s), KIMBERLY DAWN
17 VANDERMOST, and all others
18 similarly situated
19
20
21
22
23
24



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EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

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SENT BY ELECTRONIC SUBMISSION

March 27, 2023

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

Re: Kimberly Dawn Vandermost / Dywidag Systems Employers

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Kimberly Dawn Vandermost (hereafter “Vandermost” or “Complainant”) provides notice that Dywidag Systems International, USA, Inc., a New York corporation, and related entities (collectively “the Dywidag Systems Employers” or “the Employers”) violated her rights and those of all other individuals the Dywidag Systems Employers have employed or otherwise contracted with in California as Regional Contract Managers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code section 203 and other Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Vandermost hereby provides this notice to the Labor & Workforce Development Agency and the Dywidag Systems Employers and their agents and representatives.

At all relevant times, the Dywidag Systems Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies throughout California. Vandermost and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///

///

Statement of Facts

On approximately October 13, 2003, the Dywidag Systems Employers began to employ Vandermost in Long Beach in the position of salaried Regional Contract Manager. The Dywidag Systems Employers continuously employed her in that capacity until on or about April 4, 2022 when her employment ended.

At all relevant times, the Dywidag Systems Employers issued wages to Vandermost and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis. At all relevant times, the Dywidag Systems Employers classified Vandermost and all other Aggrieved Employees as exempt employees entitled to some protections of the Labor Code and the Wage Order.

The Dywidag Systems Employers failed to timely pay Vandermost and all of the other Aggrieved Employees all earned wages at the conclusion of employment. The Dywidag Systems Employers failed to promptly pay Vandermost and all other Aggrieved Employees their final wages within the time limits prescribed by Labor Code section 203. The Dywidag Systems Employers failed to pay Vandermost and all other Aggrieved Employees their final wages at the time of termination of employment.

For the reasons stated herein, Vandermost alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees: The Dywidag Systems Employers willfully failed to timely pay Vandermost and all other Aggrieved Employees all earned wages when their employment ended.

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

The Wage Order

The Wage Order applies to “all persons employed in professional, technical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis. . . .” Wage Order, § 1. The Wage Order defines “Professional, Technical, Clerical, Mechanical, and Similar Occupations” to include “professional, semiprofessional, managerial, supervisory, and mechanical occupations . . . their

assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Wage Order, § 2(O).

At all relevant times during the applicable limitations period, the Dywidag Systems Employers, Vandermost, and all of the Aggrieved Employees, were covered by the Wage Order because the Dywidag Systems Employers operated, and Vandermost and all of the Aggrieved Employees worked for, the Dywidag Systems Employers as Regional Contract Managers, their assistants, and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Vandermost and all other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

The Dywidag Systems Employers failed to pay Vandermost and all other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Dywidag Systems Employers, including all regular wages, accrued vacation, accrued sick leave, and other

compensation. By failing to pay Vandermost and all of the other Aggrieved Employees as set forth above at the end of employment, the Dywidag Systems Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all other Aggrieved Employees, Vandermost seeks civil penalties from the Dywidag Systems 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 Kimberly Dawn Vandermost will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Kimberly Dawn Vandermost

LWDA / The Dywidag Systems Employers
Re: Kimberly Dawn Vandermost
March 27, 2023
Page 5 of 5

John F. Kuentler, Esq.
Barnes & Thornburg LLP
2029 Century Park East, Suite 300
Los Angeles, CA 90067
jkuentler@btlaw.com

PROOF OF SERVICE

State of California,
County of Los Angeles

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

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

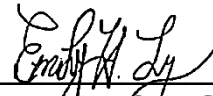
On Friday, June 2, 2023, I served the foregoing document described as **FIRST AMENDED COMPLAINT** on interested parties by electronic mail, addressed as follows:

John F. Kuenstler, Esq.
BARNES & THORNBURG LLP
2029 Century Park East, Suite 300
Los Angeles, CA 90067
john.kuenstler@btlaw.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 emily@spivaklaw.com.

EXECUTED on Friday, June 2, 2023 at Los Angeles, California.

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



EMILY HOUNG LY



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EXHIBIT 5

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4 **BARNES & THORNBURG LLP**
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5 Los Angeles, California 90067
Telephone: (310) 284-3880
6 Facsimile: (310) 284-3894

7 Attorneys for Defendant DYWIDAG SYSTEMS
8 INTERNATIONAL, USA, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11

12 KIMBERLY DAWN VANDERMOST, on
13 behalf of herself and all others similarly
14 situated, and the general public, and as an
"aggrieved employee" on behalf of other
15 "aggrieved employees" and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

16 Plaintiff,

17 vs.

18 DYWIDAG SYSTEMS INTERNATIONAL,
19 USA, INC., a New York corporation; and
DOES 1-50, inclusive,

20 Defendant(s).
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Electronically FILED by
Superior Court of California,
County of Los Angeles
6/05/2023 11:14 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By K. Martinez, Deputy Clerk

Case No. 23STCV06697

[Assigned to Hon. Lawrence P. Riff, Dept. 7]

**DEFENDANT'S ANSWER TO
PLAINTIFF'S FIRST AMENDED CLASS
AND REPRESENTATIVE ACTION
COMPLAINT**

Complaint Filed: March 28, 2023

FAC Filed: June 2, 2023

Trial Date: Not Set

1 Defendant Dywidag Systems International, USA, Inc. ("Defendant") hereby answers the
2 unverified First Amended Complaint for Waiting Time Penalties (Lab. Code § 203) and Civil Penalties
3 (Lab. Code §§ 2898, *et seq.*) ("FAC") filed by Plaintiff Kimberly Dawn Vandermost ("Plaintiff").

4 **GENERAL DENIAL**

5 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendant generally
6 and specifically denies each and every allegation of the unverified FAC. Cal. Code. Civ. Proc. §
7 431.30(d).

8 **AFFIRMATIVE DEFENSES**

9 Further, without waiving or excusing the burden of proof of Plaintiff, or admitting that
10 Defendant has any burden of proof, Defendant hereby asserts the following separate, additional, and
11 alternative affirmative defenses against Plaintiff's claims, as an individual and as the purported
12 representative of the putative class/allegedly aggrieved employees.

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State a Cause of Action)**

15 Plaintiff has failed to meet Plaintiff's burden inasmuch as the FAC, and each of the purported
16 causes of action, fail to state facts sufficient to constitute a claim against Defendant.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Unclean Hands)**

19 Without conceding that any act of Defendant caused damage to Plaintiff in any respect,
20 Plaintiff's causes of action are barred by the doctrine of unclean hands.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Estoppel)**

23 Plaintiff has failed to meet Plaintiff's burden inasmuch as any recovery on Plaintiff's FAC or
24 any purported cause of action therein, is barred in that Plaintiff is estopped by Plaintiff's conduct to
25 claim any right to damages or relief against Defendant.

26 ///

27 ///

28 ///

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Statutes of Limitations)**

3 Plaintiff's claims are barred by the applicable statutes of limitations, including, but not limited
4 to, California Code of Civil Procedure sections 337, 338, 339, 340, and 343; and California Labor Code
5 section 2699.3, *et seq.*

6 **FIFTH AFFIRMATIVE DEFENSE**

7 **(Laches)**

8 Plaintiff's claims are barred by the doctrine of laches.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 **(Waiver)**

11 Plaintiff has failed to meet Plaintiff's burden inasmuch as any recovery on Plaintiff's FAC, or any
12 purported cause of action alleged therein, is barred by the doctrine of waiver.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 **(Lack of Standing)**

15 Plaintiff has failed to meet Plaintiff's burden inasmuch as Plaintiff lacks standing to bring some
16 or all of the claims alleged against Defendant pursuant to the California Labor Code.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 **(Attorneys' Fees)**

19 Plaintiff has failed to meet Plaintiff's factual and pleading burden inasmuch as there is a
20 requirement that attorneys' fees be reasonable. Plaintiff's counsel has already failed to utilize the most
21 efficient method of proceeding with this case, and on information and belief, will continue to do so.

22 **NINTH AFFIRMATIVE DEFENSE**

23 **(Good Faith Belief)**

24 Plaintiff has failed to meet Plaintiff's burden inasmuch as the FAC, and each and every
25 purported cause of action set forth therein, is barred, in whole or in part, because the actions taken
26 during Plaintiff's employment and thereafter were based on a reasonable, good faith belief in the facts
27 as known and understood at the time and were not willfully unlawful in any respect.

28 **TENTH AFFIRMATIVE DEFENSE**

1 (No Damages or Injury)

2 Plaintiff has failed to meet Plaintiff's burden inasmuch as the FAC is barred in whole or in part
3 because Plaintiff has suffered no damage or injury by any acts, events, or occurrences alleged in the
4 FAC, whether or not attributable to Defendant.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 (Plaintiff Caused Damage)

7 The FAC, and each purported cause of action contained therein, is barred because Plaintiff's
8 injuries, if any, were legally caused, in whole or in part, by Plaintiff's own negligent or intentional acts
9 or omissions. Further, as Plaintiff failed to exercise ordinary care on Plaintiff's own behalf, Plaintiff's
10 own acts and omissions proximately caused and contributed to the loss, injury, damage, or detriment
11 alleged by Plaintiff and Plaintiff's recovery from Defendant, if any, should be reduced proportionately
12 by the percentage of Plaintiff's negligence or fault.

13 **TWELFTH AFFIRMATIVE DEFENSE**

14 (No Proximate Cause)

15 Plaintiff has failed to meet Plaintiff's burden inasmuch as any acts or omissions by Defendant
16 were not a proximate cause of any injuries alleged by Plaintiff.

17 **THIRTEENTH AFFIRMATIVE DEFENSE**

18 (Adequate Alternative Means)

19 Plaintiff has failed to meet Plaintiff's burden inasmuch as Plaintiff had an adequate alternative
20 means to obtain the relief Plaintiff seeks (e.g., the California Department of Industrial Relations,
21 Department of Labor Standards Enforcement) but did not do so.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 (Unjust Enrichment)

24 The granting of Plaintiff's demands in the FAC would result in unjust enrichment, as Plaintiff
25 would receive money to which Plaintiff is not entitled.

26 **FIFTEENTH AFFIRMATIVE DEFENSE**

27 (No Excessive Fines)

28 Plaintiff is not entitled to recover the excessive fines prayed for in Plaintiff's FAC, as an award

of these excessive fines would violate Defendant's rights under the Constitution of the United States of America and under the Constitution of the State of California, including Defendant's rights to: (1) procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of California; (2) protection from "excessive fines" as provided in the Eighth Amendment of the United States Constitution and Article 1, Section 17 of the Constitution of the State of California; and (3) substantive due process provided by the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of California.

SIXTEENTH AFFIRMATIVE DEFENSE

(Offset)

Without conceding that any act of Defendant caused damage to Plaintiff in any respect, Defendant is entitled to offset against any judgment that may be entered for Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Substantial Compliance)

Plaintiff has failed to meet Plaintiff's burden inasmuch as Defendant fully or substantially complied with all applicable statutes and regulations.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Not Properly Maintained as a Class Action)

This suit may not be properly maintained as a class action because: (1) Plaintiff has failed to plead, and cannot establish the necessary procedural elements for class treatment; (2) a class action is not an appropriate method for the fair and efficient adjudication of the claims described in the FAC; (3) common issues of fact or law do not predominate; to the contrary, individual issues predominate; (4) Plaintiff's claims are not representative or typical of the claims of the putative class; (5) Plaintiff is not a proper class representative; (6) the named Plaintiff and alleged putative class counsel are not adequate representatives for the alleged putative class; (7) Plaintiff cannot satisfy any of the requirements for class action treatment, and class action treatment is neither appropriate nor constitutional; (8) there is not a well-defined community of interest in the questions of law or fact affecting Plaintiff and the members of the alleged putative class; and (9) the alleged putative class is not ascertainable, nor are its members identifiable.

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 **(Unlawful Delegation of Executive Authority)**

3 Plaintiff's PAGA claim is barred to the extent private actions seeking PAGA penalties manifest
4 an unlawful delegation of executive authority.

5 **TWENTIETH AFFIRMATIVE DEFENSE**

6 **(Limited Discretion under PAGA)**

7 Plaintiff's PAGA claim is barred because this Court is limited in its discretion to assess civil
8 penalties.

9 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

10 **(Due Process Violation)**

11 Plaintiff's PAGA claim is barred pursuant to the Eighth Amendment of the United States
12 Constitution and Article I, Section 17, of the California Constitution because the penalties impose
13 excessive fines and violate the due process rights of Defendant.

14 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

15 **(Due Process Violation)**

16 Plaintiff's PAGA claim is barred pursuant to the United States Constitution and the California
17 Constitution to the extent Labor Code section 2698, *et seq.* imposes double penalties and violates the
18 due process rights of Defendant.

19 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

20 **(Membership in Union and Collective Bargaining Agreement)**

21 Plaintiff's claims are barred due to the fact that the putative class members/allegedly aggrieved
22 employees are members of a Union who are subject to the negotiated terms and conditions of
23 employment under a Collective Bargaining Agreement that governs the issues raised in the FAC.

24 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

25 **(Section 301 Preemption)**

26 Plaintiff's Complaint, in whole or in part, is preempted by Section 301 of the Labor
27 Management Relations Act, 29 U.S.C. § 185(a), as there is and was at all relevant times a valid
28

collective bargaining agreement in place between Plaintiff's employer and the union representing the putative class members/allegedly aggrieved employees.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(LMRA Preemption)

Plaintiff's Complaint, in whole or in part, is preempted by the Labor Management Relations Act, as the claims bear, in whole or in part, on areas that are arguably protected or arguably prohibited by the National Labor Relations Act and/or areas that Congress intended to leave unregulated by the states and therefore relate to issues that may not be regulated by the States.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Arbitration)

This Court lacks jurisdiction over Plaintiff's claims because each claim brought by Plaintiff is subject to a mandatory, binding arbitration agreement.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Alternative Dispute Resolution)

This Court lacks jurisdiction over Plaintiff's claims because Plaintiff is required to participate in an alternative dispute resolution mechanism pursuant to an agreement between the Parties or by operation of law.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Breach of Contract)

Defendant alleges the existence of a valid and enforceable contract, which bars or limits Plaintiff and the putative class members/allegedly aggrieved employees from obtaining relief.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Business Justification)

Defendant maintains its activities undertaken with respect to Plaintiff were justified as such activities were proper, fair, and legitimate business activities and due to business-related reasons which were neither arbitrary, capricious, nor unlawful.

THIRTIETH AFFIRMATIVE DEFENSE

(No Waiting Time Penalties)

1 Assuming, *arguendo*, that Defendant failed to timely pay wages upon termination, any claim for
2 penalties is barred, in whole or in part, because any failure to pay waiting time penalties was not knowing,
3 intentional, or willful.

4 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

5 **(Failure to Exhaust Internal and Administrative Remedies)**

6 Plaintiff's claims are barred because Plaintiff and the putative class members/allegedly
7 aggrieved employees failed to exhaust available internal and administrative remedies.

8 **RESERVATION OF RIGHTS**

9 Defendant hereby gives notice that it intends to rely upon such other and further affirmative
10 defenses as may become available during discovery in this action and reserves the right to amend its
11 Answer, in accordance with applicable law, to assert any such defenses.

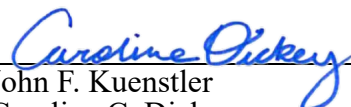
12 **PRAYER**

13 Defendant denies that Plaintiff has any valid claims, and denies that Plaintiff is entitled to any
14 relief. For these reasons, Defendant respectfully requests:

- 15 (1) that Plaintiff's claims for relief be denied;
16 (2) that a Final Award be entered in favor of Defendant;
17 (3) that Plaintiff take nothing by way of Plaintiff's FAC;
18 (4) that Defendant be awarded its costs and expenses incurred in defense of this action,
19 including attorneys' fees; and
20 (5) that Defendant be awarded any other relief this Court deems just and proper.

21 Dated: June 5, 2023

BARNES & THORNBURG LLP

23 By: 
24 John F. Kuentler
25 Caroline C. Dickey
26 Rochelle Calderon
27 Attorneys for Defendant
28 Dywidag Systems International, USA, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 300, Los Angeles, California 90067. On June 5, 2023, I served the foregoing document(s) described as:

DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT on interested parties below, using the following means:

David G. Spivak, Esq.
Jenica Leonard, Esq.
THE SPIVAK LAW FIRM
8605 Santa Monica Boulevard
PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094
Facsimile: (213) 634-2485
Email: david@spivaklaw.com
Email: jenica@spivaklaw.com

Attorneys for Plaintiff Kimberly Dawn Vandermost

☒ **BY UNITED STATES MAIL** I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

☐ **BY OVERNIGHT DELIVERY** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission through the Court Service Provider, Express Network, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on June 5, 2023 at Los Angeles, California.

Monica Martinez

Print Name

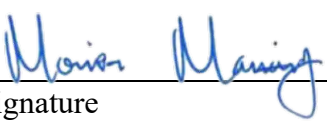

Signature

EXHIBIT 6



Sample size calculator

What margin of error can you accept?

5% is a common choice

32%

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

Lower margin of error requires a larger sample size.

What confidence level do you need?

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

95%

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

Higher confidence level requires a larger sample size.

What is the population size?

If you don't know, use 20000

147

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

9

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	5.56%	0.00%	0.00%	Your sample size would need to be	7	9	15

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

More information

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

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

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

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

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

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

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

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

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

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

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

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

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

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Questions? Please let us know.

Print Done

EXHIBIT 7

Confidential Settlement Communication

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc.
Case no.: 23STCV06697
Court: Los Angeles
Judge: The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject: **Data**

Important Dates

Lab.Code § 203 (waiting time penalties) period begins:	Saturday, March 28, 2020
Lab.Code § 2699 (civil penalties) period begins:	Sunday, March 27, 2022
LWDA Notice:	Monday, March 27, 2023
Lawsuit:	Tuesday, March 28, 2023
Sample begin:	Saturday, March 28, 2020
Sample end:	Friday, December 1, 2023
Mediation:	Thursday, December 21, 2023
Anticipated Settlement Period end date:	Friday, April 19, 2024

Classes / Groups sizes

Waiting Time Penalties Class Members:	147
PAGA Aggrieved Employees:	34

Averages

Average Hourly Rate:	\$	36.74
Average Overtime Rate:	\$	55.11
Average Doubletime Rate:	\$	73.48
Average Work Hours Per Day:		8.30
Paycycle:	weekly (52 paychecks/year)	
Paychecks Per Year:		52

Confidential Settlement Communication

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc.
Case no.: 23STCV06697
Court: Los Angeles
Judge: The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject: **Waiting Time / Final Wages**
#REF! Lab.Code § 203

Waiting Time Penalties Class Members:		147
Days waiting:		13
Average Hourly Rate:	\$	36.74
Average Overtime Rate:	\$	55.11
Average Doubletime Rate:	\$	73.48
Average Work Hours Per Day:		8.40
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.40
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	603,807.20

Confidential Settlement Communication

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc.
Case no.: 23STCV06697
Court: Los Angeles
Judge: The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil		Subsequent		Pay periods		Total
	Penalty Statute	Initial penalty	penalty				
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00		147	\$	29,300.00
Total:						\$	29,300.00

Confidential Settlement Communication

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Case title:	Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc.
Case no.:	23STCV06697
Court:	Los Angeles
Judge:	The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject:	Totals
Authority:	Various

Penalties					
Waiting time penalties:	\$	603,807.20	5%	\$	573,616.84
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$	29,300.00	5%	\$	27,835.00
Penalties subtotal:	\$	633,107.20		\$	601,451.84
Attorney fees:	\$	41,613.15	5%	\$	39,532.49
Attorney costs:		\$6,640.42	5%	\$	6,308.40
Grand total:	\$	681,360.77		\$	647,292.74

EXHIBIT 8



AGREEMENT

**IRON WORKER
EMPLOYERS**

**STATE OF CALIFORNIA
AND A PORTION OF
NEVADA....AND**

**DISTRICT COUNCIL
OF IRON WORKERS
OF THE STATE OF
CALIFORNIA AND
VICINITY...**



JULY 1, 2020 – DECEMBER 31, 2024

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UNION

DISTRICT COUNCIL OF IRON WORKERS
OF THE
STATE OF CALIFORNIA AND VICINITY
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(510) 724-9277

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LOCAL UNION 155 (Mixed)
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Fresno, California 93727
(559) 251-7388

LOCAL UNION 229 (Mixed)
5155 Mercury Point
San Diego, CA 92111
(858) 571-5238

LOCAL UNION 377 (Mixed)
570 Barneveld Avenue
San Francisco, California 94124
(415) 285-3880

LOCAL UNION 378 (Mixed)
3120 Bayshore Road
Benicia, California 94510
(707) 746-6100

LOCAL UNION 416 (Reinforcing)
13830 San Antonio Drive
Norwalk, California 90650
(562) 868-1251

LOCAL UNION 433
(Structural, Ornamental and Rigging)
17495 Hurley Street East
City of Industry, California 91744
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Roseville, California 95678
(916) 784-9110

INDUSTRIAL CONTRACTORS, UMIC, INC.
447 Georgia Street
Vallejo, California 94590
(707) 552-6040

ASSOCIATED GENERAL CONTRACTORS OF
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3095 Beacon Boulevard
West Sacramento, California 95691
(916) 371-2422

STEEL FABRICATORS ASSOCIATION OF
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AGREEMENT

IRON WORKER EMPLOYERS STATE OF CALIFORNIA AND A PORTION OF NEVADA AND DISTRICT COUNCIL OF IRON WORKERS OF THE STATE OF CALIFORNIA AND VICINITY

This Agreement is made and entered into this 6th day of May 2021, retroactive to July 1, 2020, by and between the California Ironworker Employers Council, Inc., the collective bargaining representative for the Employers consisting of:

Western Steel Council

Industrial Contractors, UMIC, Inc.

Associated General Contractors of
California, Inc.

Steel Fabricators Association of
Southern California, Inc.

United Contractors

Southern California Contractors
Association, Inc.

Association of Construction Employers

United General Contractors, Inc.

Nevada Chapter of the Associated
General Contractors of America, Inc.

and such other individual employers who are members of the California Ironworker Employers Council, Inc. and signatory hereto and the District Council of Iron Workers of the State of California and Vicinity and Local Unions 118, Sacramento; 155, Fresno; 229, San Diego; 377, San Francisco; 378, Oakland; 416, Los Angeles; 433, Los Angeles and 844, Pinole of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, who are affiliated with said District Council, which District Council and Local Unions are signatory hereto and are recognized as the collective bargaining representatives of the employees. Said District Council and Local Unions are affiliated with the Building and Construction Trades Department of the American Federation of Labor - Congress of Industrial Organizations.

SECTION 1. Purpose of Agreement

A - This Agreement is entered into by collective bargaining between the Employers and the Union to prevent strikes and lockouts and to facilitate peaceful adjustment of grievances and disputes between the Employers and the workmen in this trade and to prevent waste, unnecessary and avoidable delays and expenses; for the purpose, at all times, of securing for the Employers sufficient skilled workmen and, so far as possible, to provide for labor's continuous employment, such employment to be in accordance with the conditions herein set forth and at wages herein agreed upon, also that stable conditions may prevail in the building industry and building costs may be as low as possible, consistent with fair wages and by which these ends may be accomplished.

B - The California Ironworker Employers Council, Inc., composed of the collective bargaining representatives for the Employers who are:

Western Steel Council

Industrial Contractors, UMIC, Inc.

Associated General Contractors of
California, Inc.

Steel Fabricators Association of
Southern California, Inc.

United Contractors

Southern California Contractors
Association, Inc.

Association of Construction Employers

United General Contractors, Inc.

Nevada Chapter of the Associated General
Contractors of America, Inc.

and such other individual employers who are members of the California Ironworker Employers Council, Inc. and signatory hereto hereinafter referred to as the EMPLOYERS. The term UNION means any of the Local Unions affiliated with the District Council of Iron Workers of the State of California and Vicinity composed of Local Unions 118, Sacramento; 155, Fresno; 229, San Diego; 377, San Francisco; 378, Oakland; 416, Los Angeles; 433, Los Angeles and 844, Pinole.

SECTION 2. Effective Area

This Agreement covers all work in the State of California and the State of Nevada with the exception of the Counties of Elko, Eureka and White Pine located in the State of Nevada.

SECTION 3. Craft Jurisdiction

A - This Agreement shall cover all work in connection with field fabrication and/or erection of structural, ornamental and reinforcing steel work coming within the jurisdiction of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers recognized by the Building and Construction Trades Department of the American Federation of Labor - Congress of Industrial Organizations.

B - It is agreed the jurisdiction of work covered by this Agreement is that provided for in the charter grant issued by the American Federation of Labor to the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, it being understood that claims are subject to trade agreements and final decisions of the AFL-CIO.

C - The Iron Workers jurisdictional claims for its journeyman and apprentice Iron Workers shall include but not be limited to job classifications of Architectural and Ornamental, Machinery Movers, Erectors and Riggers, Reinforcing Iron Workers, Structural, Stone Derrick Men, Welders, Fence Erectors and Sheeteters and shall include but not be limited to the following:

All work in connection with field fabrication and/or erection or deconstruction of structural, ornamental and reinforcing steel, including but not limited to the fabrication, rigging and signaling, erection and construction of all iron and steel, ornamental lead, bronze, brass, copper and aluminum, plastics and all other substitute materials, including, but not limited to, composites, carbon fiber and fiberglass, all barrier railings, handrail, aluminum, steel, glass and plastic, reinforced concrete structures or parts thereof; bridges, viaducts, inclines, dams, docks, dredges, vessels, locks, gates, guides, aqueducts, reservoirs, spillways, flumes, caissons, cofferdams, subways, tunnels, cableways, tramways, monorails, blast furnaces, stoves, kilns, coolers, crushers, agitators, pulverizers, mixers, concentrators, ovens, cupolas, roof

decking such as but not limited to "Cofar", "Trusdeck", Mahon "M"; smoke conveyors, penstocks, flag poles, drums, shafting, shoring, fur and storage rooms, fans and hot rooms, stacks, bunkers, conveyors, dumpers, elevators, vats, tanks, enamel tanks, enamel vats, towers, pans, hoppers, plates, anchors, caps, corbels, lintels, Howe and combination trusses, grillage and foundation work, grating, bucks, partitions, hanging ceilings, hangers, clips, brackets, flooring, floor construction and domes, rolling shutters, curtains, frames; aluminum, rolling fire, won and iron doors, including supports; cast tiling, air ducts, duct and trench frames and plates; wire work, railings, wire cable including pipe, guards, fencing, grill work, sidewalk and vault lights, skylights, roofs, canopies, light steel framing, marquees, awnings, the erection and installation of playground equipment to include bolting, fastening, welding of swings, slides, jungle gyms, footings and other related equipment elevator and dumb waiter enclosures, elevator cars, tracks, fascias, aprons, operating devices, steel and aluminum sash, hardware and screens, frames, fronts, lockers, racks, book stacks, tables, shelving, metal furniture, seats, chutes, escalators, stairways including preengineered stairs, ventilators, boxes, fire escapes, signs, jail and cell work, safes, vaults, vault doors, safe deposit boxes, corrugated sheets when attached to steel frames including insulation; frames in support of boilers; materials altered in field such as framing, cutting, bending, drilling, burning and welding including by acetylene gas and electric machines; metal forms and false work pertaining to concrete construction; seismic isolation systems and dampening systems including base isolators, sectional water tube and tubular boilers and stokers; traveling sheaves, vertical hydraulic elevators, bulkheads, skip hoists, making and installation of articles made of wire and fibrous rope, rigging in connection with pumps, compressors, forced and induced draft fans, air meters, Bailey meters, agitators, oxygen converters, cinder machines, pelletizing machines, reactor vessels, reactor spheres, completed tanks and assembled sections of completed tanks, scroll cases, refineries, hydroelectric power houses and steam plants, cogeneration plants, vessels and government departments; false work, travelers, scaffolding, pile drivers, sheet piling, derricks and powered derrick swinger including the erection, installation, handling and operating. Cranes erection, installation, handling and operating of same on all forms and types of construction work. The operation of Valla and Spider type battery and/or propane powered portable floor cranes having no operator seat uti-

lized to install ironworker scope of work and the same on all forms and types of construction work. Crane work at the ports, including hammer-head cranes, container cranes and rubber tire cranes. Offloading, relocation, and commissioning of all burning and removal of sea bracing track layout; erection of apex boom extensions, back reach extensions, and rail replacement. Includes all welding, containment and structural modifications of the aforementioned items; railroad bridge work including maintenance thereof; moving, hoisting and lowering of machinery, modules, skid modules and placing of same on foundation, including bridges, cranes, intermittent use forklifts, derricks, buildings, piers and vessels; loading, unloading, necessary maintenance, erection, installation, removal, wrecking and dismantling of all of the above and all reinforcing work and submarine diving in connection with or about same; erection of steel towers, chutes and spouts for concrete where attached to towers and handling and fastening of cables and guys for same; unloading, racking, sorting, cutting, bending, hoisting, placing and tying including the use of any and all mechanical tying devices, burning and welding including stud welding of all iron, steel and metal in reinforced concrete construction including mesh for floor arches and the making of hoops and stirrups, metal forms and metal supports thereof; jacking of slip forms, installation of all wire, cable, parabolic cans, steel and all other materials, including, but not limited to, composites, carbon fiber and fiberglass, used for the purposes of prestressing including grouting of ducts, poststressing concrete girders, beams, columns, etc.; loading, unloading, hoisting, handling, signaling, placing and erection of all prestressed, poststressed, precast materials, G.F.R.C., Dryvit System, including the securing by bolting and/or welding and the installation of steeltex and wire mesh of any type when used for reinforced concrete construction; erection of all curtain wall; glass handrail; stay in place deck; automated and/or mechanical parking structures; offloading, staging, hoisting and setting of modular structures and micro-units; curtain wall systems and associated sealants. Window wall and entrances, panels, insulated and non-insulated, factory and field assembled, porcelain enameled panels, panel systems including terracotta, ceramic, laminated spandrelite, louvers and sun screens; application of thiokol, neoprene and other sealants used to seal materials installed by Iron Workers; installation and handling of phenolic panels, including but not limited to, Trespa products and all similarly related materials and/or systems; installation of metal window stools and sills;

installation of aluminum, bronze and steel thresholds; erection and dismantling of all types of cranes and changing of booms; erection of rock, sand and gravel plants, dismantling and loading out conveyors, aggregate plants, batch plants, cableways, refrigeration plants, etc.; erection and dismantling of Monigan walking dragline, launch-hammer bucket wheel excavator and other trenching equipment; signaling on highlines, whirley cranes and derricks, buck hoists, man hoists, fork lifts, material towers and scanning antennae; metal and steel supports of all types; fabrication, assembling and erection of offshore drilling platforms or similar installations; dust collectors, precipitators, multi-plate, specialty welding processes, unloading, loading, hoisting, handling and rigging of all building materials delivered to the job site; hanging ceilings, tees, channels, beams, acoustical elements, sound barriers, computer floors, etc.; installation of stage rigging (including counterweights), curtains, draperies, traverse rods, tracks, cables, window cleaning equipment, powered work platforms, including and loading and unloading, erection installation and removal of powered chassis-mounted elevating mast climbing work platforms, rigging in connection with display shows; ski lifts, etc.; wrecking of bridges, viaducts, elevated roads and structural steel and iron in buildings; all steel frames for openings, all porches, verandas, canopies and balconies; all overhead travelers, duorails, tramrails; erection, setting, repairing of guard or collision rails on bridges and approaches, road ways or any other structures; handling and setting of all types of steel and metal joists, including metal box joists for trusslab and preformed keystone shaped metal joists; erection of steel and metal houses and packaged buildings; all translucent and plastic material on steel frame construction; the erection of solar energy systems, including but not limited to, photo voltaic, heliostat and parabolic systems, energy producing windmill type towers, wind turbine erection to included, but not limited to, prep work, bolt-up, tensioning or torque of bolts on base and all tower section turbine and blade assemblies; nuclear reactors, electromagnetic shielding plates and atomic vessels including all component parts; the plumbing, aligning and leveling of all materials and equipment through the use of optical instruments, LASER beams, etc., and the use of instruments to establish layout, installation and disposition of ironworker installed scope of work, excluding any independent 3rd party surveyor work (this shall not preclude the use of

Supervisory or Administrative personnel to direct these operations utilizing such instruments); the unloading, distributing, stockpiling and handling of all materials coming under the jurisdictional claims of the UNION such as to rail heads, storage yards, loading and unloading, hoisting, handling, signaling of all fabricated material and equipment at the jobsite (except FOB deliveries) related to the Iron Workers jurisdiction that is within the individual employers' contractual scope of work including from and to barge and ships to a lay down yard or construction project, etc., shall be done by the Iron Workers.

All reinforcing work in connection with field fabrication, including but not limited to the pre-assembly of reinforcing cages, loading and unloading, handling, racking, sorting, cutting, bending, hoisting, intermittent use of forklifts, placing, burning, welding and tying of all material including the use of any and all mechanical tying devices, or substitute materials, including but not limited to, composites, carbon fiber and fiberglass, stainless steel, used to reinforce concrete construction shall be done by Iron Workers within the individual employers' scope of work at the jobsite, excluding FOB deliveries. A working Iron Worker shall be employed for maintenance on jobs of substantial size while concrete is being poured on reinforcing steel, wire mesh and paper back steeltex but will not be required as a stand-by man.

All work in connection with the installation, alignment, repair & modification of panelized roofing systems, pre-engineered fabric structures, aluminum clarifier coverings, carports, mini-storages, and dock planks. All work in connection with the installation, alignment, repair and modification of bleachers, planking and stadium seating. All work in connection of installation of amusement rides including, but not limited to, the erection and alignment of all track, machinery and related components.

The following scope of work shall be performed at the Iron Workers Fence Erector rate: All work in connection with field fabrication, erection and construction of chain link fence, enclosures, ornamental fence, gates, playground equipment to include bolting and fastening, welding of slides and jungle gym, wood fence, rubber mats, plastic, pvc, wire and metal beam guardrail.

SECTION 4. Union Security

A - Every person performing work covered by this Agreement who is a member of the Union and in the employment of an individual employer on work covered by this Agreement on the effective date of this Subsection A shall, as a condition of employment, or continued employment, remain a member in good standing of the Union in the appropriate Local Union of the Union. Every other person covered by this Agreement and employed to perform work covered by this Agreement shall be required, as a condition of employment, to apply for and become a member of and to maintain membership in good standing in the Union in the appropriate Local Union of the Union which has territorial jurisdiction of the area in which such person is performing work on or after the expiration of eight (8) continuous or accumulative days of employment on such work with any individual employer following the beginning of such employment, or the effective date of this Subsection A, whichever is later. Membership in any Local Union shall be available to any such person on the same terms and conditions generally applicable to other applicants for membership.

B - The individual employer shall not be required to discharge any employee pursuant to this Section until a written request from the District Council of Iron Workers or Local Union for such action, stating all pertinent facts showing the non-compliance shall have been served upon such individual employer or his agent or representative, and two (2) working days have been allowed for compliance therewith. The removal and replacement of any workman upon prior written notice to the individual employer shall not interrupt or interfere with the progress of the work.

C - The provisions of this Section 4 shall be applicable in California and applicable in Nevada to the full extent permitted by law.

D - No employee shall be discharged or discriminated against for activity in or representation of the Union or any Local Union.

The Union shall be the sole judge of the qualifications of its members.

E - The individual employer shall be the sole judge of the qualifications of all of his employees and may on such grounds discharge any of them.

F – The Union does hereby indemnify and shall hold the individual employer harmless against any and all forms of liability that shall arise out of, or by reason of action taken by the individual employer for the purpose of complying with the provisions of Section 4 of this Agreement.

SECTION 5. Employment

A - In order to maintain an efficient system of production in the industry, to provide for an orderly procedure for the referral of applicants for employment, and to preserve the legitimate interest of employees in their employment, the Employers and the Union agree that when an individual employer requires workmen to perform any work covered by this Agreement he shall hire applicants for employment to perform such work in accordance with this Agreement.

B-1 - The individual employer shall have the right to employ directly a minimum number of key employees who may include a General Foreman and a Foreman. In addition, the individual employer shall have the right to employ directly on any job in the locality in which the individual employer maintains a principal place of business all employees required on such job or jobs, provided such employees are regular employees of the individual employer who have been employed by him fifty per cent (50%) of the working time of the applicants during the previous twelve (12) months.

B-2-a - On jobs in localities in which the individual employer maintains a principal place of business, he shall have the right to hire by name employees from the Local Union having jurisdiction on a ratio of two (2) employees hired by name from the Group A list regardless of the position of the ordered man on said list, to one (1) employee dispatched by the Local Union from the Group A list. The first employee hired shall be dispatched by the Local Union from the Group A list.

Notwithstanding the above ratio, an individual employer shall have the right to hire by name employees from the Local Union having jurisdiction from the Group A list regardless of the position of the ordered man or woman on said list, if said man or woman has been employed by the individual employer at anytime during the previous twelve (12) months.

B-2-b - On jobs of the individual employer located outside of the locality in which he maintains a principal place of business, said individual employer shall have the right to ship and may maintain a ratio of fifty per cent (50%) of his employees on the job in the Local Union having jurisdiction over the area where the job is located. The remaining fifty per cent (50%) of his employees shall be hired from the Local Union having jurisdiction. Any deviation from this ratio shall require written mutual agreement between the Local Union Business Manager/Agent and the Employer.

B-3 - If the individual employer orders additional employees by name, he shall have the right to hire by name employees from the Local Union having jurisdiction on a ratio of two (2) employees hired by name from the Group A list regardless of the position of the ordered man on said list, to one (1) employee dispatched by the Local Union from the Group A list. The first employee hired shall be dispatched by the Local Union from the Group A list. Men ordered by name from the Group A list will be dispatched regardless of their position on said list.

On jobs of two (2) days duration or less, requiring three (3) employees or less, including the foreman, of the individual employer located outside of the locality in which he maintains a principal place of business, said individual employer shall have the right to ship one hundred percent (100%) of his employees on the job in the Local Union having jurisdiction over the area where the job is located, provided the employer obtains prior written approval from the Business Manager/Agent of the Local Union having jurisdiction over the area where the job is located.

B-4-a - A workman who is assigned to work in the jurisdiction of another Local Union covered by this Agreement shall notify the Financial Secretary or Business Agent of such Local Union that he is in their jurisdiction. This notification shall be in person, by telephone, or by mail, at least twenty-four (24) hours prior to starting work.

B-4-b - Employers who assign workmen to work in the jurisdiction of another Local Union covered by this Agreement shall notify the Local Union they are working in the jurisdiction. This notification shall be by telephone, or by mail within twenty-four (24) hours.

B-5 - For the purpose of this Subsection 5(B) locality shall mean:

- Area No. 1 - Jurisdiction of Local Union 377.
- Area No. 2 - Jurisdiction of Local Union 378.
- Area No. 3 - Jurisdiction of Local Unions 416 and 433.
- Area No. 4 - Jurisdiction of Local Union 229.
- Area No. 5 - Jurisdiction of Local Union 155.
- Area No. 6 - Jurisdiction of Local Union 118.

The agreement between Local Union 377, San Francisco and Local Union 378, Oakland, in effect since December 3, 1939 permitting employees to work in lieu of transfer in either area, shall remain in full effect.

C - All other journeyman required by an individual employer shall be furnished and referred to such individual employer through the hiring office of the appropriate Local Union.

D - No provision of this Section shall constitute a limitation on the right of the individual employer to transfer workmen on his payroll from time to time and from place to place at the discretion of the individual employer, providing he secures fifty per cent (50%) of his workmen from the Local Union having jurisdiction.

E - The individual employer shall have the right to reject any applicant referred by the appropriate Local Union, subject to the provisions of Section 6-E - "Show Up" Expense and Section 9-J - "Show Up" Expense.

F - Subject to the provisions of Section 4 of this Agreement, "Union Security", selection and referral of journeymen applicants to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by, union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies or requirements. The selection and referral of applicants shall be operated in accordance with the following plan:

Any workman desiring employment in work covered by this Agreement shall be registered in one of the Groups listed below. Each such workman shall be registered in the highest priority Group for which he qualifies.

GROUP "A-1"

All applicants for employment who have worked at the trade as journeymen or apprentices in work of the type covered by this Agreement for the past three (3) years in the geographic area covered by the Local Union issuing the dispatch slip, provided, however, if such applicants request registration in this Group with the designation of a particular classification or classifications, and specialty or specialties, they shall have worked at least six (6) months within the three (3) years immediately preceding such registration, in such classification or classifications, and specialty or specialties. All apprentices graduating to journeyman status within the geographic area covered by the Local Union issuing the dispatch slip shall be included in this Group "A-1".

GROUP "A-2"

All applicants for employment who have worked at the trade as journeymen or apprentices in work of the type covered by this Agreement for the past three (3) years in the geographic area covered by the District Council of Iron Workers of the State of California and Vicinity, provided, however, if such applicants request registration in this Group with the designation of a particular classification or classifications, and specialty or specialties, they shall have worked at least six (6) months within the three (3) years immediately preceding such registration, in such classification or classifications, and specialty or specialties. All apprentices graduating to journeyman status within the geographic area covered by the District Council of Iron Workers of the State of California and Vicinity shall be included in this Group "A-2".

GROUP "B"

All applicants for employment who have worked at the trade as journeymen or apprentices in work of the type covered by this Agreement for the past four (4) years, provided, however, if such applicants request registration in this Group with the designation of a particular classification or classifications, and specialty or specialties, they shall have worked at least nine (9) months within the four (4) years immediately preceding such registration, in such classification or classifications, and specialty or specialties.

GROUP "C"

All applicants for employment who have worked at the trade as journeymen or apprentices in work of the type covered by this Agreement for the past two (2) years or more and who have for the past year actually resided within the geographic area covered by this Agreement.

GROUP "D"

All applicants for employment who have worked at the trade in work of the type covered by this Agreement for one (1) year or more immediately preceding the date of their registration.

GROUP "E"

All other applicants for employment.

G - Each Local Union shall maintain each of the separate Group lists set forth above which shall list the applicants within each Group in the order of the dates they registered.

H - 1 - Individual employers shall advise the appropriate Local Union of the number and classification or classifications, and specialty or specialties, of applicants required. The appropriate Local Union shall refer applicants to the individual employer by first referring applicants in Group "A-1" in the order of their places on said list and then referring applicants in the same manner successively from the lists in Group "A-2", then Group "B", then Group "C", then Group "D", then Group "E".

2 - Whenever a Local Union maintains a branch hiring hall, the individual employer shall call the main hiring hall for workmen whenever the branch hiring hall's out-of-work list is exhausted of all workmen who are bona fide residents in the territorial area designated for the branch hiring hall. Workmen shall not be registered on more than one out-of-work list at any one time.

I - 1 - Any individual desiring employment shall register at the appropriate Local Union by appearing personally and shall indicate his name, address, telephone number, Social Security Account number, classification or classifications, specialty or specialties of the type of work desired, the date of such registration and other pertinent information if required.

2 - Available for employment shall mean:

a - All individuals seeking employment under Subsection I-1 above shall be in the Local Union at regularly established Roll Call time.

b - All individuals eligible for referral shall be present at the Local Union during dispatching hours; provided, however, they may be present at a location where they can be reached by telephone if they live in a remote area or, due to extenuating circumstances, cannot be personally present.

3 - a - Dispatching hours shall be any two and one-half (2-1/2) period between the hours of 7:00 a.m. and 10:30 a.m. daily (Saturdays, Sundays and recognized holidays excluded) at the discretion of each Local Union. The District Council of Iron Workers will notify the Employer Groups of each Local Union's dispatch hours. In emergency cases, workmen may be dispatched other than at dispatching times.

b - If the individual employer gives the appropriate Local Union twenty-four (24) hours notice before men are needed, the Local Union will within said twenty-four (24) hour period advise such individual employer of any inability to man the job within the period specified.

c - Upon commencing a job in a subsistence zone, the individual employer will give the appropriate Local Union notice for men by 10:30 a.m. on the preceding work day when complying with the provisions of Subsection D of this Section.

4 - Upon being referred, each individual shall receive a referral slip to be transmitted to the employer representative at the job site, indicating his name, address, Social Security Account number, type of job, date of proposed employment, date and time of referral and rate of pay.

5 - To ensure the maintenance of a current registration list, all individuals who do not reregister or notify the Union in writing of their availability within one (1) week of their previous registration shall be removed from the registration list. If such individuals reregister pursuant to the provisions of this Section, they shall maintain their previous position on such list.

6 - Individuals shall be eliminated from the registration list for the following reasons:

a - Dispatched to the job and hired - except that any individual who is rejected by the individual employer shall retain his position on said list.

b - Any individual dispatched to a job who fails to report for work shall be placed at the bottom of the list provided he reregisters.

c - Any individual dispatched to a job and who reports for work in an intoxicated condition thereby being unfit for work shall be placed at the bottom of the list provided he reregisters.

7 - No individual who is rejected by the individual employer shall be rereferred to such individual employer with respect to the same request pursuant to which he was initially referred.

J - The order of referral set forth above shall be followed except in cases where individual employers require and call for applicants possessing special skills and abilities in which case the appropriate Local Union shall refer the first applicants possessing such special skills and abilities in the order they appear on the appropriate register.

K - In California, apprentices shall be hired and transferred solely in accordance with the applicable Apprenticeship Standards Agreement approved by the Department of Industrial Relations of the State of California and entered into by the appropriate parties and, in Nevada, they shall be hired and transferred in accordance with the laws of that State. This Section 5 shall not apply to the hiring of apprentices.

L - In the event the referral facilities maintained by the appropriate Local Union are unable to fill the requisition of an individual employer for employees within a forty-eight (48) hour period after such requisition is made by the individual employer (Saturdays, Sundays and holidays excepted), the individual employer may employ applicants from any source. In such events, the individual employer will notify the appropriate Local Union of the names, addresses, Social Security Account numbers and dates of such hirings. Such notification shall be given promptly but not to exceed twenty-four (24) hours after such hiring (Saturdays, Sundays, and holidays excepted).

M – In the event any job applicant is dissatisfied with his Group classification or his order of referral in that such applicant claims he was not placed in the proper Group set forth above or is aggrieved by the operation of the hiring arrangement or the provisions of this Section, such aggrieved job applicant may appeal in writing within ten (10) days from the day on which his complaint arose to an Appellate Tribunal consisting of a representative selected by the Employers and a representative selected by the Union and an impartial Umpire appointed jointly by the Employers and the Union, and the decision of the Appellate Tribunal shall be final and binding.

N - Equal Employment Opportunity - The Employers and the Union recognize they are required by law not to discriminate against any person with regard to employment or union membership because of race, religion, age, color, sex, national origin or ancestry and hereby declare their acceptance and support of such laws. This shall apply to hiring, placement for employment, training during employment, rates of pay or other forms of compensation, selection for training including apprenticeship. The Employers and the Union recognize and will implement the Journeyman Recruitment and Trainee Recruitment Orientation Training and Placement program signed June 18, 1970, provided the program continues to be funded by the United States Department of Labor and other programs agreed upon between the parties to this Agreement approved and funded by the United States Department of Labor.

O – Probationary Member – Terms, conditions and implementation of the Iron Workers Probationary Member Program shall be the responsibility of the International Association, District Council of Iron Workers and the Local Union.

SECTION 6. Work Hours Per Day

A - **Hours of Work** - Eight (8) hours shall constitute a day's work from 5:00 a.m. to 5:00 p.m. from Monday through Friday inclusive. Noon hour may be curtailed by agreement with the workmen on the job and the individual employer or his representative. Change in starting time shall be made by mutual agreement between the individual employer and the Business Agent of the appropriate Local Union; except on jobs where the majority of the Building Trades craftsmen have established

an earlier starting time for the job, in which case workmen covered under this Agreement will conform to the earlier time. Notification must be given to the Union.

On jobs where workmen covered by this Agreement are working with Building Trades craftsmen who are working a shorter work day or work week, they shall receive a full day's pay if their work is curtailed because of the other crafts leaving the job.

An individual employer may start the day shift earlier than 5:00 a.m., providing he notifies the appropriate Local Union of his intention to do so prior to making the change in starting time. An earlier starting time may be established by mutual consent between the Business Agent of the appropriate Local Union and the individual employer.

By mutual agreement between the individual employer and the Business Agent/Manager of the appropriate Local Union or the District Council of Iron Workers, and with one week's notice, a four (4) day per week, ten (10) hour per day work shift may be established. The regular work week shall be from Monday through Thursday. Pay for each of these four (4) days shall be ten (10) hours at the straight time hourly rate.

All work in excess of ten (10) hours per day shall be paid at one and one-half (1½) times the straight time hourly rate for the first two (2) hours worked and double time shall be paid for all work in excess of twelve (12) hours Monday through Thursday, and Friday if Friday is worked as a makeup day.

Friday may be worked as a voluntary make-up day in those cases where the work is shut down due to inclement weather or an emergency situation. Not less than (8) hours shall be scheduled to be worked on the makeup day subject to the provisions of paragraph 6 E – Work Day. An employee may refuse to work on makeup day without penalty or recrimination.

If a fifth day is worked, the pay shall be one and one-half (1 ½) times the straight time hourly rate for the first eight (8) hours worked. All work in excess of eight (8) hours worked on the fifth day shall be paid two (2) times the straight time hourly rate.

If a sixth or seventh day is worked, the pay shall be two (2) times the straight time hourly rate.

B-1 - If workmen are required to work continuously for more than four and one-half (4 ½) hours or five (5) hours when the normal starting time is established before 8:00 a.m. without an opportunity for lunch during the period of a normal shift, they shall receive overtime pay for work after the four and one-half (4 ½) hours, (or five (5) hours) until opportunity to take time for lunch is afforded and shall thereafter be allowed a reasonable opportunity to eat lunch on the individual employer's time. (Example: 6:00 a.m. starting time - 5 hours; 7:00 a.m. starting time - 5 hours; 8:00 a.m. starting time – 4 ½ hours.)

B-2 – Rest Periods - Every individual employer shall authorize and permit all employees to take rest periods, which insofar as practicable, shall be in the middle of each work period. Nothing in this provision shall prevent an individual employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes per rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at individual employer designated areas, which may include or be limited to the employee's immediate work area.

Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the individual employer shall make up the missed rest period within the same work day or compensate the employee for the missed ten (10) minutes of rest time at his or her applicable rate of pay within the same pay period.

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.

If an individual employer fails to authorize or permit an employee a rest period in accordance with the applicable provisions of this Section the

individual employer shall pay the employee one (1) hour of pay at the employee's applicable rate of compensation for each work day that the rest period was not provided. Penalties for violation of this Section shall be in accordance with Wage Order No. 16 of the Industrial Welfare Commission as interpreted by the Department of Industrial Relations.

Nothing in this section confers any right or duty on the Department of Industrial Relations to resolve any dispute or assess any actual penalties for violations of this section. Any dispute regarding the provisions of this Section shall be subject to Section 28 Grievance Procedure of this Agreement.

C - Any employee who completes a shift and is required to work more than two (2) hours overtime at the end of a shift will be permitted a one-half (1/2) hour meal period as follows:

He shall be permitted a one-half (1/2) hour meal period for which he will receive regular overtime pay during which time no work shall be permitted and/or one-half (1/2) hour's pay at the regular overtime rate in lieu thereof.

D - Changes in the work hours per day in special cases may be made to meet special conditions by mutual agreement between the individual employer and the Business Agent of the appropriate Local Union or the District Council of Iron Workers. This mutual agreement is mandatory without regard to the reason necessitating the change.

E - **Work Day** - When an employee is ordered by the individual employer or his representative to report for work and then through no fault of the employee is not put to work, said employee shall be paid a "show up" expense of \$60.00. If an employee is put to work, he shall receive not less than four (4) hours pay at the straight time hourly rate. If an employee works more than four (4) hours but less than six (6) hours, he shall receive not less than six (6) hours pay at the straight time hourly rate. Pay for hours worked beyond the first six (6) hours shall be figured on the basis of actual hours worked. In all cases the employee must remain on the job unless released by the individual employer. On Saturdays, Sundays and holidays, "show up" expense will be computed at the applicable overtime factor.

When an employee quits of his own volition, he shall be paid only for actual hours worked.

Pre-Day Hire - When the employer places an order for workmen during dispatch hours of the appropriate Local Union to report at the start of the next day's shift, (or later), such new hires shall be paid for actual hours worked on their first day of employment.

Same Day Hire - When the individual employer places an order for workmen on the same day the men are dispatched, report for work and start work, by 10:00 a.m., (9:00 a.m. on 7:00 a.m. dispatched men) the workmen will be paid for a full day's work of eight (8) hours.

Inclement Weather - An individual employer shall advise an employee before the end of the shift that the individual employer's work is suspended due to inclement weather. This shall not constitute a lay-off. The employee shall be notified at least two (2) hours in advance of the normal starting time to report back to work. When the employee has no telephone or cannot be reached, the individual employer shall provide a telephone number for the employee to call and receive instructions on reporting to work. In the event the project is shut down due to inclement weather for more than two (2) consecutive work days, the employee will report back to the work site and be put to work or receive his "show up" expense and termination pay.

Workmen will furnish the individual employer with their current telephone number and address.

F - Shift Work - When two (2) shifts are employed, the first shift (morning shift) shall work up to eight (8) hours and shall be paid for each hour worked, or proportionate part thereof, the basic wage rate. The second shift shall work up to eight (8) hours and shall be paid for each hour worked, or proportionate part thereof, the basic wage rate plus a premium equal to 6% of the basic wage rate.

When three (3) shifts are employed, the first shift (morning shift) shall work up to eight (8) hours and shall be paid for each hour worked, or proportionate part thereof, the basic wage rate. The second shift shall work up to eight (8) hours and shall be paid for each hour worked, or proportionate part thereof, the basic wage rate plus a premi-

um equal to 6% of the basic wage rate. The third shift shall work up to eight (8) hours, and shall be paid for each hour worked, or proportionate part thereof, the basic wage rate plus a premium equal to 13% of the basic wage rate.

When two (2) shifts are employed on any job, the second shift shall start not later than 5:30 p.m.

When three (3) shifts are employed on any job, the third shift shall start not later than 2:30 a.m.

The Friday shift ending on Saturday morning will be considered Friday work. The Sunday shift ending on Monday morning will be considered Sunday work.

There shall be no more than three (3) shifts worked in any twenty-four (24) hour period. Employees will have a minimum of eight (8) hours break between the ending of a shift and the beginning of another shift.

On all shift work, the "morning" shift, starting at 5:00 to 9:00 a.m. (or earlier by mutual agreement) shall be considered as the first shift.

No multiple shifts shall be established or started for less than two (2) consecutive work days on each and every shift.

In the event the second and/or third shifts do not work the full three (3) shifts, the individual employer shall pay the workmen the overtime rate on these shifts.

In cases of emergency, multiple shifts may be allowed to operate for less than three (3) days by mutual agreement between the individual employer and the appropriate Local Union Business Agent.

Shift work shall continue until the end of the emergency. The emergency cannot stop on Friday evening and then start again on Monday.

Dedicated Shift Work – The employer may establish a dedicated shift outside of the regular work day of not less than three (3) days duration on the basis of eight (8) hours worked for eight (8) hours paid, or a proportionate part thereof for the time worked, the basic wage rate plus a premium equal to 6% of the basic wage rate. Dedicated

shifts may not be used for amusement park facilities currently covered by an existing Project Labor Agreement (PLA).

G - Holidays - Holidays to be recognized as overtime days will be:

Northern California and Southern California - New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the day following Thanksgiving Day, Christmas Day.

Northern Nevada - New Year's Day, Presidents Day, Admission Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the day following Thanksgiving Day, Christmas Day.

Southern Nevada - New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the day following Thanksgiving Day, Christmas Day.

No work shall be performed on Labor Day except to save life and property.

The above holidays shall be observed on the dates designated by the State of California and/or the State of Nevada or by Federal law.

If any of the above listed holidays falls on a Sunday, the Monday following shall be observed as a holiday. If any of the above listed holidays falls on a Saturday the holiday will be observed on the preceding Friday.

The geographic demarcation line for holidays shall be on the same basis as provided in Northern and Southern California Master Labor Agreements with other basic crafts.

Northern California refers to the forty-six counties north of San Luis Obispo and Kern Counties. Southern California refers to the twelve counties south of and including San Luis Obispo and Kern Counties and also including Inyo and Mono Counties.

H - Special Project Conditions - When workmen covered by this Agreement are working with other Building Trades crafts on steel mills, chemical plants, refineries, steam plants, mining

facilities, cement plants, offshore facilities, or remote projects (those which cover vast geographic areas and where suitable living conditions are not available within thirty-five (35) miles of the job), they shall be allowed to be off the individual employer's property or job site by the end of the work shift when any craft which is working on such project at the same time is so allowed.

If a workman covered by this Agreement is required to walk, ride or travel in any way into, on or through the property of an individual employer or owner on the abovementioned projects, he shall be covered by all applicable insurance.

I - **Emergencies** - When an individual employer considers it necessary to shut down a job or project to avoid possible loss of human life because of an emergency situation that could endanger the life and safety of employees, in such cases the individual employer agrees that "show up" expense will be paid as well as subsistence if due. All other hours will be compensated on the basis of actual hours worked.

SECTION 7. Wage Rates and Other Remuneration

A - **Wage Rates for Journeypersons and Apprentices** - The minimum hourly wage rates shall apply as follows:

The minimum hourly wage rates are determined by the 5 zones listed below effective July 1, 2021:

Zone 1---San Francisco City and County

Zone 2---Alameda, Contra Costa, San Mateo and Santa Clara Counties

Zone 3---Los Angeles City including the cities of Baldwin Hills, Beverly Hills, Burbank, Culver City, El Segundo, Gardena, Hawthorne, Hermosa Beach, Inglewood, Lawndale, Lennox, Lomita, Manhattan Beach, Marina Del Rey, Rancho Palos Verdes, Redondo Beach, Rolling Hills Estates, San Fernando, Santa Monica, Torrance, Universal City, West Hollywood and Westwood Veterans Affairs

Zone 4---California Counties of Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Humboldt, Imperial, Kern, Kings, Lake, Los Angeles (portions not covered in Zone 3), Madera, Marin, Mariposa,

Mendocino, Merced, Monterey, Napa, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Ventura, Yolo, Yuba
Nevada Counties of Carson City, Clark, Douglas, Nye, Storey, Washoe

Zone 5---California Counties of Alpine, Del Norte, Inyo, Lassen, Modoc, Mono, Siskiyou, Trinity

Nevada Counties of Churchill, Esmeralda, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing

*Excluding all renewable energy and energy storage new construction projects, which shall be considered under the wage and fringe benefits as indicated in Zone 4

Zone 1.

Effective	*Reinforcing, Structural and Ornamental
July 1, 2020	\$42.50
July 1, 2021	\$46.23
January 1, 2022	Wage increase will be allocated prior to 1-1-22. Apprentice wage rates shall be increased by the applicable percentage for the period of apprenticeship based on the amount of total package increase allocated to journeyperson wages. See Section 10.A for applicable Apprentice percentages by period of Apprenticeship.
January 1, 2023	Wage increase will be allocated prior to 1-1-23. Apprentice wage rates shall be increased by the applicable percentage for the period of apprenticeship based on the amount of total package increase allocated to journeyper-

son wages. See Section 10.A for applicable Apprentice percentages by period of Apprenticeship.

January 1, 2024	Wage increase will be allocated prior to 1-1-24. Apprentice wage rates shall be increased by the applicable percentage for the period of apprentice based on the amount of total package increase allocated to journeyperson wages. See Section 10.A for applicable Apprentice percentages by period of Apprenticeship.

Effective January 1, 2022 a total monetary increase of \$2.25 per hour will be allocated by the Union to wages and/or trust fund contributions.

Effective January 1, 2023 a total monetary increase of \$2.75 per hour will be allocated by the Union to wages and/or trust fund contributions.

Effective January 1, 2024 a total monetary increase of \$2.80 per hour will be allocated by the Union to wages and/or trust fund contributions.

Zone 2.

Effective	*Reinforcing, Structural and Ornamental
July 1, 2020	\$42.50
July 1, 2021	\$45.73
January 1, 2022	Wage increase will be allocated prior to 1-1-22. Apprentice wage rates shall be increased by the applicable percentage for the period of apprentice based on the amount of total package increase allocated to journeyperson wages. See Section 10.A for applicable Apprentice percentages by period of Apprenticeship.

January 1, 2023	Wage increase will be allocated prior to 1-1-23. Apprentice wage rates shall be increased by the applicable percentage for the period of apprentice based on the amount of total package increase allocated to journeyper-son wages. See Section 10.A for applicable Ap-prentice percentages by period of Apprenticeship.

January 1, 2024	Wage increase will be allocated prior to 1-1-24. Apprentice wage rates shall be increased by the applicable percentage for the period of apprentice based on the amount of total package increase allocated to journeyper-son wages. See Section 10.A for applicable Ap-prentice percentages by period of Apprenticeship.

Effective January 1, 2022 a total monetary increase of \$2.25 per hour will be allocated by the Union to wages and/or trust fund contributions.

Effective January 1, 2023 a total monetary increase of \$2.75 per hour will be allocated by the Union to wages and/or trust fund contributions.

Effective January 1, 2024 a total monetary increase of \$2.80 per hour will be allocated by the Union to wages and/or trust fund contributions.

Zone 3.

Effective	*Reinforcing, Structural and Ornamental
July 1, 2020	\$41.00
July 1, 2021	\$43.88
January 1, 2022	Wage increase will be allocated prior to 1-1-22. Apprentice wage rates shall be increased by the applicable percentage

for the period of apprenticeship based on the amount of total package increase allocated to journeyperson wages. See Section 10.A for applicable Apprentice percentages by period of Apprenticeship.

January 1, 2023 Wage increase will be allocated prior to 1-1-23. Apprentice wage rates shall be increased by the applicable percentage for the period of apprenticeship based on the amount of total package increase allocated to journeyperson wages. See Section 10.A for applicable Apprentice percentages by period of Apprenticeship.

January 1, 2024 Wage increase will be allocated prior to 1-1-24. Apprentice wage rates shall be increased by the applicable percentage for the period of apprenticeship based on the amount of total package increase allocated to journeyperson wages. See Section 10.A for applicable Apprentice percentages by period of Apprenticeship.

Effective January 1, 2022 a total monetary increase of \$2.35 per hour will be allocated by the Union to wages and/or trust fund contributions.

Effective January 1, 2023 a total monetary increase of \$2.35 per hour will be allocated by the Union to wages and/or trust fund contributions.

Effective January 1, 2024 a total monetary increase of \$2.45 per hour will be allocated by the Union to wages and/or trust fund contributions.

Zone 4.

Effective	*Reinforcing, Structural and Ornamental
July 1, 2020	\$41.00
July 1, 2021	\$43.00
January 1, 2022	Wage increase will be allocated prior to 1-1-22. Apprentice wage rates shall be increased by the applicable percentage for the period of apprenticeship based on the amount of total package increase allocated to journeyperson wages. See Section 10.A for applicable Apprentice percentages by period of Apprenticeship.
January 1, 2023	Wage increase will be allocated prior to 1-1-23. Apprentice wage rates shall be increased by the applicable percentage for the period of apprenticeship based on the amount of total package increase allocated to journeyperson wages. See Section 10.A for applicable Apprentice percentages by period of Apprenticeship.
January 1, 2024	Wage increase will be allocated prior to 1-1-24. Apprentice wage rates shall be increased by the applicable percentage for the period of apprenticeship based on the amount of total package increase allocated to journeyperson wages. See Section 10.A for applicable Apprentice percentages by period of Apprenticeship.

Effective January 1, 2022 a total monetary increase of \$2.25 per hour will be allocated by the Union to wages and/or trust fund contributions.

Effective January 1, 2023 a total monetary increase of \$1.80 per hour will be allocated by the Union to wages and/or trust fund contributions.

Effective January 1, 2024 a total monetary increase of \$1.85 per hour will be allocated by the Union to wages and/or trust fund contributions.

Zone 5.

Effective	*Reinforcing, Structural and Ornamental
July 1, 2020	\$41.00
July 1, 2021	\$41.00
January 1, 2022	Wage rate remains the same throughout the term of this Agreement. Employer is obligated to pay increase to benefits only, to be allocated prior to 1-1-22. Apprentice wage rates shall be increased by the applicable percentage for the period of apprenticeship based on the amount of total package increase allocated to journey person wages. See Section 10.A for applicable Apprenticeship percentages by period of Apprenticeship.
January 1, 2023	Wage rate remains the same throughout the term of this Agreement. Employer is obligated to pay increase to benefits only, to be allocated prior to 1-1-23. Apprentice wage rates shall be increased by the applicable percentage for the period of apprenticeship based on the amount of total package increase

allocated to journeyper-
son wages. See Section
10.A for applicable Ap-
prentice percentages by
period of Apprenticeship.

January 1, 2024	Wage rate remains the same throughout the term of this Agreement. Employer is obligated to pay increase to bene- fits only, to be allocated prior to 1-1-24. Appren- tice wage rates shall be increased by the appli- cable percentage for the period of apprentice based on the amount of total package increase allocated to journeyper- son wages. See Section 10.A for applicable Ap- prentice percentages by period of Apprenticeship.

Fence Erector Rate

Effective	
July 1, 2020	\$36.08 (5 Bay Area Counties) \$34.58 (all other Coun- ties in CA/NV)

ALL AREAS OF CALIFORNIA AND NEVADA COVERED BY THE COLLECTIVE BARGAINING AGREEMENT

July 1, 2021	\$38.08

The Union agrees to an Advisory committee to
be appointed by the CIEC to make recommenda-
tions to the Union on allocations.

Overtime - Time and one-half shall be paid
for the first two (2) hours worked in excess of eight
(8) hours on any regular work day Monday through
Friday. Time and one-half shall be paid for the first
eight (8) hours worked on Saturday and double
time shall be paid for all hours worked in excess
of eight (8) hours. All other overtime worked, in-
cluding Sundays and holidays, shall be paid at the
double time rate. Overtime pay shall be computed
by not less than half-hour increments. No work

shall be performed on Labor Day except to save life and property.

Foremen – Effective July 1, 2003, Foremen shall be paid not less than 10% more than the regular hourly rate of the highest journeyman Iron Worker classification over which they have supervision.

When two (2) or more Iron Workers are employed, one (1) shall be selected by the individual employer to act as Foreman and shall receive a Foreman's wages.

B – Congestion Zone Fee – Effective July 1, 2021, the Congestion Zone Fees for Zones 1, 2 and 3 were converted to an hourly rate, from a daily rate, and added to the hourly rate of pay.

C – Parking Fee - In congested areas the individual employer shall provide, or pay for, parking facilities for workmen where free parking is not available within three (3) standard blocks of the job. Bona fide validated parking tickets must be submitted to the individual employer within fifteen (15) calendar days and paid within fifteen (15) calendar days of delivery of validated receipts.

D – Journeyman Retraining Stipend – The employer shall pay as an incentive for voluntary journeyman retraining a stipend of \$50.00 for a half day and \$100.00 for a full day. The stipend will be paid for attending and completing the training session. A certificate of completion will be required for reimbursement.

E - Tolls - The individual employer shall pay all bridge and ferry tolls. Bona fide validated receipts must be submitted to the individual employer within fifteen (15) calendar days and paid within fifteen (15) calendar days of delivery of validated receipts.

F - Election Day - Time will be allowed to vote in accordance with the provisions of the applicable California or Nevada Election Code.

***To the above rates the Vacation contribution is to be added for figuring gross wages for tax purposes.**

SECTION 8. Pay Day

The regular pay day shall be once a week on such day agreed upon between the individual employer and the appropriate Local Union. Wages shall be paid before quitting time on the job, in cash, by check or other legal tender. An electronic fund transfer or a no fee, no limit debit card may be offered by the individual employer. The method of payment must be authorized by the employee in writing and consistent with state laws. The employee has the right to revoke the method of payment at their discretion; provided, the employee delivers to the individual employer written notice of the change at least fifteen (15) calendar days prior to implementation. When requested by the Union, an individual employer will make arrangements with a local bank to cash the workmen's paycheck. Individual employers may withhold where necessary a reasonable amount of wages but not to exceed the provisions contained in the Labor Code of the State of California, or Nevada when applicable, to enable them to prepare the payroll. If pay day falls on a holiday, the workmen shall be paid the day preceding the holiday.

When workmen are laid off, or discharged, they shall be laid off or discharged at the site of construction and paid in full in cash, by check or other legal tender immediately and, if required to go to some other point or to the office of the individual employer, the workmen shall be paid for time required to go to such places.

An employee who quits shall be mailed his pay in full by certified mail to his last known address within seventy-two (72) hours or be paid prior to leaving the job or project.

Any undue delay or loss of time caused the workmen through no fault of their own shall be paid for at the regular straight time wages by the individual employer causing such delay.

Accompanying each payment of wages shall be a separate statement identifying the individual employer, showing the total earnings, the amount of each deduction, the purposes thereof and net earnings.

If workmen are not paid by their individual employer during the usual working hours, they shall receive the applicable overtime rate for all time after the regular working hours that they are re-

quired by the individual employer to remain on the job site on such regular pay day. If workmen are not required to remain on the job site on the regular pay day, they shall receive four (4) hours pay at the appropriate overtime rate. Workmen, who through no fault of their own, are not paid on the regular pay day shall be paid waiting time for each hour of time they are required to wait on the next and each succeeding day at the regular straight time hourly rate, not to exceed eight (8) hours per day. Where an employee is still employed by the individual employer, waiting time shall be in addition to the employee's regular hourly rate.

SECTION 9. Expenses Out of Town

A - Subsistence Pay - Where a job is located 60 miles or more from the City Hall of San Francisco, Oakland, San Jose, Sacramento, Stockton, Fresno, Bishop, Bakersfield, Eureka, Redding, Napa, Los Angeles, San Diego, San Bernardino and Ventura of the State of California, and Reno and Las Vegas of the State of Nevada, a workmen will be compensated per scheduled work day for the job. Subsistence pay is determined by ascertaining the city hall enumerated above which is closest to the job. If the job is more than 60 miles from that city hall, subsistence shall be owed as follows:

Sixty (60) miles to	
seventy-five (75) miles.....	\$20.00
Seventy-five (75) miles to	
one hundred (100) miles.....	\$25.00
One hundred (100) miles and over.....	\$75.00

If a workman is shipped from one free zone into another free zone the workman shall be paid subsistence in accordance with Section 9A. The workman's initial free zone shall be the city hall listed above closest to his point of hire. For purposes of this paragraph the free zone shall be limited to the free zone closest to the point of hire.

Mileage will be the actual number of miles travelled over the most direct regularly travelled route between the job and the designated point.

When an out-of-town job is of one day's duration, a workman shall be paid travel reimbursement to and from the job. He shall not, in addition, be paid subsistence.

This Subsistence Pay is not intended by the parties to be considered wages.

B - Federal Installations:

1 – Effective July 1, 2021 in lieu of subsistence pay and travel reimbursement, the hourly wage rate will be increased by nine dollars (\$9.00) per hour for all work performed at the following locations:

Camp Roberts
China Lake Naval Test Station
Chocolate Mountains Naval Reserve - Niland
Edwards Air Force Base
Fort Hunter Liggett
Fort Irwin Military Station
Fort Irwin Training Center - Goldstone
San Clemente Island
San Nicholas Island
29 Palms - Marine Corps
U.S. Marine Base - Barstow
U.S. Naval Air Facility - Sealey
Vandenberg Air Force Base
Army Defense Language Institute - Monterey
Fallon Air Base
Naval Post Graduate School - Monterey
Yermo Marine Corps Logistics Center
Port Hueneme
Point Mugu
United States Coast Guard Station - Two Rock
Nevada National Security Site

C - **Travel Expense to Whom Due** - When an individual employer hires workmen for a job more than 60 miles away from the City Hall in those cities listed in Paragraph A, the workmen shall be paid travel reimbursement and subsistence, in accordance with the Agreement, whether or not the job is located within another expense-free zone as provided by this Agreement. The individual employer shall pay bridge, ferry and toll road fares.

D - **Travel Reimbursement** - Travel reimbursement will be paid by the individual employer as follows:

Sixty (60) miles to	
seventy-five (75) miles.....	\$25.00
Seventy-five (75) miles to	
one hundred (100) miles.....	\$50.00
One hundred (100) miles and over.....	\$60.00
Each additional fifty (50) miles.....	\$25.00

Mileage will be the actual number of miles travelled over the most direct regularly travelled route between the job and the designated point.

This Travel Reimbursement is not intended by the parties to be considered wages.

Such payments shall be based on travel from the City Hall in those cities listed in Paragraph A. The workmen shall be paid a travel reimbursement at the beginning and completion of the job. This reimbursement is in addition to subsistence as provided in this Agreement.

E - Company Transportation - When safe company transportation with proper protection from the elements is provided, workmen will be paid travel reimbursement.

F - Travel Reimbursement, Job Not Continuous - If any individual employer orders the same workmen to and from the same job more than once when the job is not continuous, workmen shall be paid travel reimbursement to and from the job for each round trip.

F-1 – Exception: where the break in continuous employment on the job is caused by Saturdays, Sundays, holidays or weather conditions or if the workmen are provided transportation at no cost to the workmen.

G - Travel Reimbursement When Due - Travel reimbursement will be paid on the first pay day after the workman starts to work. Travel reimbursement for the return trip will be paid at the conclusion of the job. Subsistence payments will be made each regular pay day. Any workman who quits voluntarily before he has worked ten (10) days or who is discharged with just and sufficient cause prior to completion of the job, will not be entitled to return travel reimbursement.

On jobs of five (5) or more days duration, travel reimbursement will not be paid either way if a workman quits voluntarily before he has worked five (5) days or shifts.

H - Expense Pay Each Day's Work - Workmen eligible for subsistence shall be paid a single day's subsistence for any working day, whether more or less than eight (8) hours, or for work on Saturday, Sunday, or a holiday. No workman shall receive more than a single day's subsistence from a single individual employer for any one day worked.

I - **Adjacent Job Sites** - When workmen are transferred from one individual employer to another, without loss of time on same job or on an adjacent job, the original individual employer will not be required to pay the return travel reimbursement but the final individual employer will be required to pay the return travel reimbursement. The individual employer will notify the appropriate Local Union giving the names and Social Security Account numbers of workmen so transferred.

J - **“Show Up Expense”** - On jobs located outside the free zones, workmen who report for work and for whom no work is provided shall be paid a “show up” expense of \$60.00 in addition to subsistence Mondays through Fridays. On Saturdays, Sundays and holidays “show up” expense will be based on the applicable overtime factor; provided that, to qualify for “show up” expense on any day the workman must remain at the job site for two (2) hours, available for work, unless released by the individual employer or his representative.

If a workman is put to work he will be paid in accordance with Section 6-E.

Note: The intent of both parties is that “show up” expense shall not be paid when the workman appears for work in an unfit condition or without proper tools or qualifications.

SECTION 10. Apprentices

A - Apprentices shall be paid the following percentages for the classification of work in which they are engaged:

Effective July 1, 2004, for Structural, Ornamental, Reinforcing and Fence Erector apprentices who are under a four (4) year term of apprenticeship for apprentices who are indentured after July 1, 2004:

First six months	50%
Second six months	55%
Third six months	60%
Fourth six months.....	65%
Fifth six months	75%
Sixth six months	80%
Seventh six months.....	90%
Eighth six months.....	95%

Apprenticeship, IMPACT, Vacation, Welfare and Workers' Compensation Trust Fund contributions will be paid on first through eighth period apprentices. Welfare Plan contribution rate for 1st period apprentices shall be \$5.50 per hour for each hour paid for and/or worked.

Administrative Trust and LMCT contributions will be paid on second through eighth period apprentices.

Defined Contribution Pension Fund contributions are not paid on first through third period apprentices.

Fifty per cent (50%) of the Defined Contribution Pension Fund contribution will be made for fourth through sixth period apprentices. One hundred per cent (100%) of the Defined Contribution Pension Fund contribution will be paid for seventh and eighth period apprentices.

Effective July 1, 2014 Pension Plan contributions on apprentices will be paid a percentage of the journeyman rate and receive a proportional benefit accrual credit as follows:

Third and Fourth.....	25%
Fifth and Sixth	50%
Seventh and Eighth.....	75%

However, all apprentices will receive full vesting pension credits for all hours worked.

B - Semiannually the California Field Iron Workers Apprenticeship Training and Journeyman Retraining Program will publish a list of all active apprentices in the State of California and vicinity showing their names, Social Security Account numbers and current pay classifications. The Program will publish a monthly update to this list to aid the Employers in payroll preparation.

To knowingly pay an apprentice above the published pay period without written approval of the appropriate Local Joint Apprenticeship Training Committee may result in the revocation of the individual employer's privilege to train apprentices.

C - When an individual employer has four (4) journeymen Iron Workers employed, excluding

Foreman and supervisory employees, the fifth person employed shall be an indentured apprentice. An individual employer may hire indentured apprentices at a ratio of four (4) journeymen Iron Workers to one (1) indentured apprentice. The ratio of journeymen to indentured apprentice may be adjusted by mutual agreement between the employer and the appropriate Local Union Business Agent and/or the General Executive Board. Ratio determination shall be calculated using the total man hours per project.

C-1 – On ornamental and Miscellaneous Iron Work which is normally performed by 2 iron workers, 1 may be an apprentice.

C-2 – On reinforcing iron work, an individual employer may hire indentured apprentices at a ratio of three (3) journeymen Iron Workers to one (1) indentured apprentice. The ratio of journeymen to indentured apprentice may be adjusted by mutual agreement between the employer and the appropriate Local Union Business Agent and/or General Executive Board.

D - Any apprentice who has been cancelled from the Apprenticeship Training Program (and has not been readmitted by action of the Joint Apprenticeship Committee) or who has dropped out of the Program shall not be permitted to register for employment or to enter the Apprenticeship Program of any Local Union covered by this Agreement; such person may not be dispatched as a journeyman.

E - Employers signatory to this Agreement shall be bound by the current approved Local Apprenticeship Standards.

F - Apprenticeship Training and Journeyman Retraining Contribution -

The California Field Iron Workers Apprenticeship Training and Journeyman Retraining Fund created by the Agreement and Declaration of Trust dated August 12, 1959, as amended, is continued in existence.

Effective July 1, 2011 a contribution of seventy-two cents (\$.72) per hour for each hour paid for and/or worked will be made to the California Field Iron Workers Apprenticeship Training and Journeyman Retraining Fund.

These contributions will be subject to and entitled to the benefits of all of the provisions of the Agreement and Declaration of Trust establishing that Fund and the provisions of the California Field Iron Workers Apprenticeship Training and Journeyman Retraining Fund adopted and amended by the Board of Trustees.

It is agreed this Trust will continue to be administered jointly.

SECTION 11. Vacation / Personal Time Off (PTO) Plan

The California Field Iron Workers Vacation/ Personal Time Off (PTO) Plan created by the Agreement and Declaration of Trust dated August 16, 1959, amended February 21, 2018, is continued in existence.

Effective July 1, 2020, a contribution of five dollars and thirty cents (\$5.30) per hour for each hour paid for and/or worked will be made to the California Field Iron Workers Vacation/Personal Time Off (PTO) Plan.

These contributions will be subject to and entitled to the benefits of all the provisions of the Agreement and Declaration of Trust establishing that Trust and the provisions of the Vacation / Personal Time Off (PTO) Plan adopted by the Board of Trustees.

It is understood said Vacation Plan shall continue to be administered pursuant to that Trust Agreement.

Provisions of this Section shall supersede any local, state or federal sick leave requirement, and specifically meets the sick leave requirement as outlined in California Labor Code Sections 245 et seq. Any local, state or federal legislation enacted, resulting in negative financial impact to the Union or Management, shall be exempted by this section, and in the event the legislation precludes exclusion for parties covered by valid Collective Bargaining Agreements, the parties agree to the full extent permitted, prior to the effective date, to enter into bargaining for the purposes of addressing the specific legislation.

*The Parties acknowledge that any and all fringes as stipulated in this Agreement excluding Vacation / PTO contributions, are not required per the provisions of AB 1867, and the employer shall not be responsible for payments to any trust fund or individual employee for the payment as required by AB 1867 sick leave to the covered employee.

SECTION 12. Welfare Plan

The California Iron Workers Field Welfare Plan created by the Agreement and Declaration of Trust dated March 1, 1953 is continued in existence.

Effective July 1, 2020, a contribution of Ten dollars and five cents (\$10.05) per hour for each hour paid for and/or worked will be made to the California Iron Workers Field Welfare Plan.

These contributions will be subject to and entitled to the benefits of all the provisions of the Agreement and Declaration of Trust dated as of March 1, 1953 establishing that Plan and the provisions of the California Iron Workers Field Welfare Plan adopted by the Board of Trustees.

It is understood said Welfare Plan shall continue to be administered pursuant to that Trust Agreement.

In the event a State or National Health Insurance law becomes effective under which the parties to this Agreement are required or choose to participate, both parties agree to meet and discuss appropriate courses of action regarding continuation of all, none or part of the then existing welfare plan. In such discussions the parties shall consider the benefits provided under the existing plan and the costs thereof; the benefits of the state or federal insurance program and the costs thereof; the methods of financing such state or federal program including employer payments, employee payments, taxes and various combinations thereof. In the event the parties cannot resolve this issue the matter shall be decided by an independent arbitrator who shall be limited to deciding the "equity" of the question. It will be a violation of this Agreement if either party engages in a strike or lockout over this issue.

*The Parties acknowledge that any and all fringes as stipulated in this Agreement excluding Vacation / PTO contributions, are not required per the provisions of AB 1867, and the employer shall not be responsible for payments to any trust fund or individual employee for the payment as required by AB 1867 sick leave to the covered employee.

SECTION 13. Pension Plan

The California Iron Workers Field Pension Trust created by the Agreement and the Declaration of Trust dated as of August 16, 1958 is continued in existence.

Effective January 1, 2016 a contribution of thirteen dollars and thirty-two cents (\$13.32) per hour for each hour paid for and/or worked will be made to the California Iron Workers Field Pension Trust.

These contributions will be subject to and entitled to the benefits of all of the provisions of the Agreement and Declaration of the Trust dated as of August 16, 1958 establishing that Trust and the provisions of the California Iron Workers Field Pension Trust adopted by the Board of Trustees.

It is understood said Pension Trust shall continue to be administered pursuant to that Trust Agreement.

*The Parties acknowledge that any and all fringes as stipulated in this Agreement excluding Vacation / PTO contributions, are not required per the provisions of AB 1867, and the employer shall not be responsible for payments to any trust fund or individual employee for the payment as required by AB 1867 sick leave to the covered employee.

SECTION 14A. Administrative Fund

The California Field Iron Workers Administrative Trust created by the Agreement and Declaration of Trust dated August 16, 1971 is continued in existence.

Effective July 1, 1998 a contribution of three cents (\$.03) per hour for each hour paid for and/or worked will be made to the California Field Iron Workers Administrative Trust.

These contributions will be subject to and entitled to the benefits of all of the provisions of the Agreement and Declaration of Trust dated as of August 16, 1971 establishing that Trust and the provisions of the California Field Iron Workers Administrative Trust adopted by the Board of Trustees.

It is understood said Administrative Trust shall continue to be administered pursuant to that Trust Agreement and the Memorandum of Understanding dated April 10, 1974.

*The Parties acknowledge that any and all fringes as stipulated in this Agreement excluding Vacation / PTO contributions, are not required per the provisions of AB 1867, and the employer shall not be responsible for payments to any trust fund or individual employee for the payment as required by AB 1867 sick leave to the covered employee.

SECTION 14B. Labor Management Cooperative Trust

The California Field Iron Workers Labor Management Cooperative Trust Fund created by the Agreement and Declaration of Trust established July 1, 1992 is continued in existence.

Effective January 1, 2017 a contribution of thirty-four (\$.34) per hour for each hour paid for and/or worked will be made to the California Field Iron Workers Labor Management Cooperative Trust.

These contributions will be subject to and entitled to the benefits of all of the provisions of the Agreement and Declaration of Trust dated as of July 1, 1992 establishing that Trust and the provisions of the California Field Iron Workers Labor Management Cooperative Trust adopted by the Board of Trustees.

It is understood said Labor Management Cooperative Trust shall continue to be administered pursuant to that Trust Agreement.

The California Field Iron Workers Labor Management Cooperative Trust will be used solely for the purposes permitted by the Labor Management Cooperation Act of 1978, including but not limited to encouragement of further Labor/Management cooperation, employment opportunities in the Field Iron Worker Industry, conducting wage surveys to establish prevailing wage rates, Market Preservation Programs and contract compliance, supplying upcoming job and industry information, preparation and dissemination of information to the parties to this Agreement for mutual understanding and cooperation and other lawful and appropriate purposes.

*The Parties acknowledge that any and all fringes as stipulated in this Agreement excluding Vacation / PTO contributions, are not required per the provisions of AB 1867, and the employer shall not be responsible for payments to any trust fund or individual employee for the payment as required by AB 1867 sick leave to the covered employee.

SECTION 14C. Ironworker Management Progressive Action Cooperative Trust (IMPACT)

The Ironworker Management Progressive Action Cooperative Trust (IMPACT) is a joint Labor Management Cooperative Trust with federal tax exempt status under Section 501(a) of the Internal Revenue Code as an exempt organization under Section 501(c)(3) of the Internal Revenue Code. Tax Exempt status determination was rendered under the initial name of the Trust which was the Employers Responsive Educational Cooperation Trust of North America. The general purposes of the Trust include the improvement and development of the Ironworker Industry through Education, Training, Communication, Cooperation and legislative initiatives.

Effective July 1, 2017, a contribution of five eighths of one percent ($5/8$ of 1%) of the applicable hourly journeyman wage rate per hour for each hour paid for and/or worked will be made to the Ironworker Management Progressive Action Cooperative Trust. This contribution shall be in lieu of any and all contractual requirements for contributions to the National Ironworkers and Employers Apprenticeship Training and Journeyman Upgrading Fund and the Institute of the Ironworking Industry.

The reporting, payment, frequency of payment and administration of such contributions shall be governed by the terms of the IMPACT Trust agreement, policies and resolutions.

Effective for all work performed on and after June 1, 2018, the current IMPACT shall be re-allocated to the Vacation/Personal Time Off (PTO) Fund. From that date forward, required payments to the Ironworker Management Progressive Action Cooperative Trust (IMPACT) will be paid from the Vacation/Personal Time Off (PTO) Fund and will be based on Vacation/Personal Time Off (PTO) Fund reported hours.

*The Parties acknowledge that any and all fringes as stipulated in this Agreement excluding Vacation / PTO contributions, are not required per the provisions of AB 1867, and the employer shall not be responsible for payments to any trust fund or individual employee for the payment as required by AB 1867 sick leave to the covered employee.

SECTION 15. Supplemental Dues

Effective for all work performed on and after June 1, 2018 it is agreed that upon authorization as required by law, the current IMPACT contribution of \$0.25/hour will be moved to the California Field Iron Workers Vacation/Personal Time Off (PTO) Plan contribution. Pursuant to the action taken and adopted at the Forty-third International Convention held August 22-26, 2016 the IMPACT contribution shall be 5/8 of 1% and the International Organizing contribution shall be 3/8 of 1%. The current \$0.83/hour Supplemental Dues deduction, current \$0.13½/hour International Organizing deduction, and current \$0.25/hour IMPACT deduction from the Vacation Trust will now be combined and calculated as a fixed four percent (4%) of the basic Journeyman wage rate for each hour paid for and/or worked and shall be deducted by the California Field Iron Workers Vacation/Personal Time Off (PTO) Plan from the Vacation Benefit of each workman and remitted directly by the California Field Iron Workers Vacation/Personal Time Off (PTO) Plan to the Union. The amount of the deduction shall be specified on the statement transmitted to the workman by the California Field Iron Workers Vacation/Personal Time Off (PTO) Plan which remittance shall be made to the Union not less than four (4) times per year. The term "Union" as used in this Section shall mean the District Council of Iron Workers of the State of California and Vicinity.

SECTION 16. Defined Contribution Pension Fund (Annuity)

The California and Vicinity Field Iron Workers Defined Contribution Pension Fund created by the Agreement and Declaration of Trust dated July 1, 1978 is continued in existence.

Effective July 1, 2019, a contribution of four dollars and six cents (\$4.06) per hour for each hour paid for and/or worked will be made to the California and Vicinity Field Iron Workers Defined Contribution Pension Fund.

These contributions will be subject to and entitled to the benefits of all of the provisions of the Agreement and Declaration of Trust made as of the 1st day of July, 1978 establishing that Trust and the provisions of the California and Vicinity Field Iron Workers Defined Contribution Pension Fund adopted by the Board of Trustees.

It is understood said Defined Contribution Pension Fund shall continue to be administered pursuant to that Trust Agreement.

*The Parties acknowledge that any and all fringes as stipulated in this Agreement excluding Vacation / PTO contributions, are not required per the provisions of AB 1867, and the employer shall not be responsible for payments to any trust fund or individual employee for the payment as required by AB 1867 sick leave to the covered employee.

SECTION 17. Shipping

Workmen shipped by shipping letter into or out of the jurisdiction of the area covered by this Agreement shall receive transportation, travel reimbursement and expenses, providing they remain on the job thirty (30) days or until the job is completed if it requires less than thirty (30) days. Workmen shipped to a job and not put to work weather permitting, or, the job is not ready for them to go to work, shall be paid the regular wage rate for such time or such workmen shall be shipped back to the shipping point with travel reimbursement and transportation paid by the individual employer.

SECTION 18. Double Jobs

No workman will be permitted to receive wages for more than one job at the same time.

SECTION 19. Pre Job Conference

It is agreed there will be a pre job conference at least one week prior to the start of any job or project at the option of either party where the agreed or estimated cost of the prime contract is One Million Dollars (\$1,000,000) or more. In the event no pre job conference is held, the contractor, upon request in writing, will advise the appropriate Local Union or Local Building Trades in writing of the start of a job at least one week prior to commencement of said job.

SECTION 20. Application to Subcontractors

A - The terms and conditions of this Agreement insofar as it affects the Employers and any individual employer shall apply equally to any Subcontractor under the control of, or working under oral or written contract with such individual employer on any work covered by this Agreement and said Subcontractor with respect to such work shall be considered the same as an individual employer covered hereby.

B - Subject to the provisions of this Section and any other Section of this Agreement applicable to Subcontractors, if an individual employer shall subcontract work covered by this Agreement, such subcontract shall state that such Subcontractor agrees to be bound by and comply with the terms and provisions of this Agreement.

C - A Subcontractor is defined as any person, firm or corporation who agrees under contract with the Employer, or any individual employer, or a Subcontractor of the Employer, or any individual employer, to perform on the job site any part or portion of the construction work covered by the prime contract, including the operation of equipment, performance of labor and installation of materials.

D - It is the intent of the parties hereto that the provisions of this Section are to be interpreted and applied solely in accordance with the law and it is not intended to expand or modify existing law.

E - The individual employer has the primary obligation for performance of all conditions of this Agreement. This obligation cannot be relieved, evaded or diminished by subcontracting. Should the individual employer elect to subcontract, the individual employer shall continue to have such primary obligation. Said primary obligation shall be deemed conclusive evidence of the Union's majority status for the purpose of establishing the obligation of the individual employer to bargain collectively pursuant to Section 8 (A)(5) of the National Labor Relations Act as amended with the Union upon expiration of this Agreement but for no other statute, rule, regulation or law.

F - Notwithstanding any other provision of this Agreement or any Memorandum Agreement, the provisions of this Subcontractor's clause may not be enforced, directly or indirectly by strike action.

G - Each individual employer shall give the Union or Local Unions written notice of any subcontract involving performance of work covered by this Agreement, which notice shall specify the name and address of the Subcontractor and job. Such notice shall be given not less than five (5) days prior to the commencement of work.

H - Provided a notice has been given under Subsection G, the liability of an individual employer under Section 20 shall be limited:

1 - to the unpaid wages and trust fund contributions with respect to the work subject to the subcontract; providing, however, that the individual employer's obligation for unpaid wages and trust fund contributions under this Subsection H-1 shall be for not more than seventy-five (75) calendar days prior to the date the individual employer is notified of the default;

2 - as to any claim violation of the hiring hall provisions of the Agreement, not to exceed five (5) days pay and trust fund contributions for each person who would have been dispatched if the hiring hall violation had not occurred.

I - In no event shall this Section 20 be or become or be construed as the basis for any jurisdictional claim.

SECTION 21. Letters of Evidence/Prevailing Wage Surveys

A – Letters of Evidence - When requested in writing, Employers who are parties to this Agreement will furnish the District Council of Iron Workers of the State of California and Vicinity or any of its affiliated Local Unions signed letters on the letterhead of the individual employer, stating they have employed Iron Workers on a specific type of work and paid the negotiated scale of wages on any and all jobs which the individual employer has performed with Iron Workers.

B – Prevailing Wage Surveys – In order to maintain the market share of work and to further the best interests of the ironworking industry, the form entitled "Report Of Construction Contractor's Wage Rates" shall be completed by the Employer and forwarded to the Trust Funds office, for each job completed. This form shall be submitted for each job completed regardless of whether or not the job is a private or public work.

To expedite this procedure a blank form shall be included along with the Employers Monthly Reporting Form mailed monthly to each employer by the Trust Funds. In addition, Labor and Management will meet and develop with the Trust Fund office an electronic reporting system to facilitate accurate reporting for prevailing wage survey purposes.

SECTION 22. Furnishing Bond, Delinquencies and Audit Program

A - The individual employer performing work covered by this Agreement, prior to the commencing of work under this Agreement, shall post a surety bond, or cash bond in lieu thereof, in the amount of Twenty-five Thousand Dollars (\$25,000) to ensure payment of wages and contributions to the Trust Funds specified in this Agreement. Any

individual employer who is delinquent on payment of said contributions may be required to furnish an additional bond as determined by the Trust Fund Delinquency Committee. A current individual employer who has not been delinquent for twenty four (24) consecutive months is exempt from the requirement to increase its existing bond.

The Union shall refuse to refer men to and shall withdraw men from any individual employer who has not complied with the provisions of this Section and such refusal and/or withdrawal will not constitute a violation of this Agreement.

B - Individual employer contributions shall be due on the 15th day of the calendar month immediately following the month in which Field Iron Workers were paid and/or worked. Such contributions will be delinquent if not received by the Trust Funds by the 25th day in the month that they are due.

In the event an individual employer has delinquencies in contributions, said individual employer shall be subject to the interest, damages and other expenses as provided for and set forth in the current Trust Agreements and/or as they may be amended. The individual employer acknowledges his awareness of the terms and conditions of the Trust Agreements including the Boards of Trustees' right to recover attorneys fees for collection of such monies and their right to terminate the participation of any individual employer who is repeatedly delinquent.

C - The administration of the bonding provisions shall be in accordance with the California Field Iron Workers Labor Management Cooperative Trust.

D - The parties recognize and agree that the sound administration of the Trust Funds requires that the respective Boards of Trustees shall have the right to have a designated Trust Auditor examine the payroll records of such individual employer to determine whether such individual employer is making full and prompt payment of all sums required to be paid by him or it to the Trusts. If the payroll records of the individual employer appear insufficient for a proper audit, the Executive Director of the California Field Iron Workers Trust Funds, on advice of Counsel, shall direct the examination of additional records to include Federal W-2, 1099 and 1096 Forms, Form 941 (DE-3)

Employers Quarterly Tax Returns, Cash Disbursement Journals, Equipment Rental Invoices and cancelled checks requested by the Auditor which are relevant to the enforcement of the Trusts' rights to proper contributions. Each audit shall be limited to the period of time allowed by State and Federal Laws. The results of each such examination shall be confidential and shall be submitted only to the individual employer and the Boards of Trustees, who shall use the same solely for the purpose of administering the Trusts. In the event of a dispute or refusal of any individual employer to permit an examination of any of the specified records, the Trust Auditor shall report the matter to the Executive Director of the California Field Iron Workers Trust Funds, who shall act on behalf of the Trust Funds to resolve the matter, on advice of Counsel if he deems it appropriate.

In the event the audit produces no findings of fringe benefits due to the Trust Funds, or where the findings reasonably appear to have been the result of clerical error or omission, the cost of the audit shall be borne by the Trust Funds. In other instances where the audit discloses the individual employer has failed to correctly report and pay contributions in accordance with this Agreement and the Trust Agreements for reasons other than clerical error or omission, the individual employer shall be liable for an hourly charge for the audit, the unpaid fringe benefits, liquidated damages, the Trust Funds reasonable attorney fees and any other costs of collection.

E - Except where limited by statute, the parties agree that any suit which seeks to enforce the provisions of the Trust Agreements shall be brought in the County of Los Angeles, State of California.

SECTION 23. Injured Workmen

A - When a workman is injured to the extent of being unable to work for the balance of the day, he will be paid for the full day at his regular rate. His ability to work or not to work shall be determined by a qualified physician.

B - Workmen injured on the job who are still employed and who are advised by the attending physician to make further visits during working hours shall make such visits with no loss of wages for time spent in making such visits.

C - Prompt medical attention shall be provided by the individual employer in the event of an on-the-job injury. On the day a serious disabling injury occurs, a Job Steward may accompany the injured worker to a medical facility without any loss of pay for his regularly scheduled shift.

SECTION 24. Basic Provisions

A - **Welder's Certification** - Any individual employer requiring Welders to have certification papers other than City certification, shall be responsible for all expenses of taking such test when that test is taken at the request of the individual employer. The individual employer shall furnish the welder with a copy of the certification papers if he remains on the job to its completion or for thirty (30) days, whichever comes first.

B - **Tools** - Workmen shall furnish for their own use all necessary hand tools to enable them to effectively install all work. Tools broken on the job such as drills, taps, hacksaw blades, etc., shall be replaced by the individual employer. Employees shall exercise reasonable judgment in the care and protection of employer's tools.

All necessary workmen's tools and clothing stored in an individual employer's shed or tool box stolen or destroyed by fire, flood, or other means, will be replaced at the individual employer's expense upon notification and presentation of a statement of loss to the individual employer or his representative. Prior to starting work, the individual employer may require the workman to supply a list of his tools to be protected by this Subsection.

C - **Coverage** - All work performed in the individual employer's warehouses, shops, or yards, which have been particularly provided or set up on the project job site to handle work in connection with the job or project covered by the terms of this Agreement, shall be subject to the terms and conditions of this Agreement.

D - **Drinking Water** - The individual employer shall furnish fresh drinking water daily (with ice when needed) and paper cups at all times. Water will be located in close proximity to working area and be easily accessible.

E - **Clothes Replacement** — Workmen required to work in any area where they are exposed to acids, caustics or any similar substances, which

would cause damage to their clothing, shoes, gloves or tools, shall be provided protective clothing and equipment by the individual employer. Change time shall be done on the individual employer's time. If their clothing, gloves, shoes or tools are damaged, such items will be replaced by the individual employer.

F - Clothes Room - Each job of sufficient size and length to justify same shall be provided with a clean shed or room for the employees to change their clothes and keep their tools. When necessary, lights and heaters will be provided.

G - Piecework - Workmen will not contract, subcontract, work piecework or work for less than the scale of wages established by this Agreement. No individual employer shall offer and/or pay, and the workman will not accept, a bonus based on specific performance on any individual job.

H - Furnishing Equipment - Workmen covered by this Agreement shall not be required as a condition of employment to furnish, lease or loan, trucks or equipment, including welding machines, burning torches, etc.

I - Work Limitation - There shall be no limitation placed on the amount of work to be performed by any workman during working hours.

J - Iron Workers Required on Structural Steel Erection - No less than six (6) men and a Foreman shall be employed around any guy or stiff leg derrick and, on all mobile or power-operated rigs of any description, no less than four (4) men and a Foreman shall be employed.

This Section 24-J shall be applied in accordance with International Circular Letter No. 568 dated July 26, 1951, a copy of which will be found on pages 69 and 70.

This Subsection J may be modified by mutual agreement between the parties.

K - Riveting Gangs - Riveting gangs shall be composed of not less than four (4) men at all times. The individual employer may require Heaters to have their fires going ready to furnish hot rivets at the regular starting time but in such event, the Heaters shall be paid the applicable overtime rate for such time worked before the regular starting time.

When three (3) or more riveting gangs are employed on any job, a Foreman shall be employed who shall not be required to work in any riveting gang except where emergencies arise which will require the Foreman to fill in temporarily in the gang.

This Subsection K may be modified by mutual agreement between the parties.

L — Iron Workers Required on Precast Concrete Erection - No less than two (2) men and a Foreman shall be employed on all mobile or power-operated rigs of any description when erecting precast concrete wall panels, beams, girders, columns, tiltup slabs and other precast concrete members.

This Subsection L may be modified by mutual agreement between the parties.

M - Physical Examinations - Employees shall not be prevented from securing employment as a result of physical examinations, except in cases of physical examinations required by City, State, Federal Government, Civil Service Rules, or as otherwise mandated by a project's owner or client. Where an individual employer requires a physical examination of a workman as a condition of employment, the individual employer will pay for the cost of the examination and will pay the workman at his straight time hourly rate for time spent taking such examination.

N – 1 - Compensation Insurance - The individual employer must at all times provide Workers' Compensation Insurance and proof of same must be furnished to the Union when requested.

N - 2 - Ironworkers Negotiated Workers' Compensation Program – The Ironworkers Negotiated Workers' Compensation Program created by the Addendum to the Master Collective Bargaining Agreement, dated February 6, 2003 and as thereafter may be amended, is continued in existence. The Ironworkers Negotiated Workers' Compensation Program Trust created by the Agreement and Declaration of Trust dated January 15, 2003 is continued in existence. **Effective July 1, 2011**, a contribution of three and one half cents (\$.035) per hour for each hour paid for and/or worked will be made to the Ironworkers Negotiated Workers' Compensation Program.

O - **Senior Employees** - It is agreed by the parties hereto there shall be no discrimination as to job opportunities due to the age of the workmen.

P - **Man Lifts** - Construction elevators for hoisting men shall be provided, operated and maintained on or in buildings or structures forty-eight (48) feet or more down and/or sixty (60) feet or more in height in compliance with the Construction Safety Orders of the State of California or same Orders for the State of Nevada as applicable.

On buildings or structures where elevators or man-lifts are provided, the elevator where reasonable and practical must be operative not less than three (3) floors beneath the derrick floor or main work areas at all times and be equipped with suitable communication or call system in the event of an emergency.

Q - **Iron Workers Required on Window Wall or Curtain Wall Erection** -All installation of window wall or curtain wall shall be performed by workmen covered by this Agreement. The provisions of the Subcontractor clause will be fully applicable to this Subsection.

R- **Substance Abuse and Recovery Program** - The New IMPACT Drug Free Workforce Program Guidelines will be utilized. The program will be mandatory for all Employers. Any employee not listed as Current/Negative in the IMPACT Drug Free Workforce database shall not be eligible for employment.

Employer is to pay a fixed stipend of \$35.00 for any of its employees who take and pass a random or eligibility test on their own time. Employer to pay employee actual time for employer or IMPACT initiated job site random test. If an employee is found to be non-negative and later confirmed, he/she is not considered employed from the time of the initial test and is not entitled to stand by pay awaiting the confirmation results.

During a random or jobsite test, if an Iron Worker submits a non-negative test result that is later confirmed, or, if he/she fails to comply with test request or refuses a test request, he/she is considered to have quit and will be paid by the employer within 72 hours.

If an employee is dispatched and is found to be ineligible for employment, the employer may send the Iron Worker for eligibility testing, at no cost to the employer. If the test results are non-negative, he/she is not considered employed. If the Iron Worker is tested and found to be eligible for employment, he/she is considered employed from the initial date/time of dispatch. Employees who are not eligible for employment shall not be paid "show-up" expense.

A standing committee consisting of equal number of Labor and Management members shall be established to review and consider changes to the national IMPACT Drug Free Workforce policy.

The parties recognize the problems that substance abuse can create. Accordingly, the parties have established a substance abuse program to deal with the problems from both a safety and productivity point of view as well as recognizing the individual rights and wellbeing of each employee. Any program implemented must be in compliance with all applicable Federal and State laws.

Employees who seek voluntary assistance for substance abuse may not be disciplined for seeking such assistance. Requests from employees for such assistance shall remain confidential and shall not be revealed to other employees or management personnel without the employee's consent. Employees enrolled in substance abuse programs shall be subject to all Employer rules, regulations and job performance standards with the understanding that employee enrolled in such a program is receiving treatment for an illness.

All apprentices entering the industry shall be subject to the provisions of the IMPACT Drug Free Workforce program.

No other Drug and Alcohol Policy shall be used except where required by Federal, State, Government Agency, Client requirements or as part of an ongoing rehabilitation program.

S – Waiver of San Francisco Paid Sick Leave Ordinance - To the fullest extent permitted, this agreement shall operate to waive any provisions of the San Francisco Paid Sick Leave Ordinance, San Francisco Administrative Code Section 12W, and shall supersede and be considered to have fulfilled all requirements of said Ordinance as presently written, and or amended during the life of this agreement.

T - Pursuant to California Labor Code Section 2699.6, the Parties hereby expressly and unambiguously waive the provisions of the California Private Attorneys General Act (PAGA), Labor Code Section 2698, et seq., and agree that none of the provisions of that statute apply to any of the employees covered by this Agreement. The parties further agree that this Agreement prohibits any and all violations of the California Labor Code sections identified in Labor Code 2699.5 and 2699(f) as well as any others that would be redressable by PAGA, and that such claims shall be resolved exclusively through the Grievance-Arbitration procedure contained in this Agreement and shall not be brought in a court of law or before any administrative agency such as the California Labor Commissioner.

An arbitrator presiding over an arbitration conducted pursuant to the Grievance Procedure shall have the authority to make an award of any and all remedies otherwise available under the California Labor Code, except for an award of penalties that would be payable to the Labor and Workforce Development Agency.

All claims or disputes involving alleged violations of the Industrial Welfare Commission Wage Order 16, the California Labor Code, and the Fair Labor Standards Act, and all derivative claims under Cal. Business & Professions Code section 17200, et. seq., as well as for associated penalties, not otherwise covered by the this Agreement, shall be subject to final and binding arbitration pursuant to Section 28 of this Agreement. To the extent permitted by law, all such claims or disputes shall be brought by or on behalf of the employee in their individual capacity only and not as a member of any purported class, collective or representative proceeding, any Arbitrator shall not have the authority to fashion a proceeding as a class, collective or representative action or to award relief to a group or class of employees in one arbitration proceeding. Nothing herein shall prohibit the parties from entering into an agreement to consolidate grievances before the Board of Adjustment hearing.

SECTION 25. Safety Provisions

A - Planking Floors - Working floors must be covered tightly and safely over entire floor except for minimum openings left for ladders. No more than two (2) floors, or a maximum of thirty (30)

feet beneath each scaffold shall remain open or uncovered.

On buildings, bridges or other structures erected or dismantled with mobile cranes or by other methods, planking, decking or nets will be provided in accordance with the Construction Safety Orders of the State of California and similar codes in the State of Nevada where applicable.

B - Stiffening and Supporting Working Load Points - When iron is landed on the floor or any point of a structure under construction, all connections shall be fitted up fully and tightened and substantial supports provided to sustain safely such added weight. No column shall be left standing in an unsafe manner.

C - Riding the Load or Load Falls - No workman shall be permitted to ride the load or load fall except in case of inspection, erection and dismantling of derricks.

D - 1 - Slings - Steel cable will be used instead of chains or hemp slings. Softeners will be used where necessary.

2 - Steel clamps shall not be used for structural steel erection except where such clamps are designed in accordance with O.S.H.A. regulations. Steel clamps and shake out hooks may be used for loading, unloading, shake out and yarding operations.

E - Communication System - Whenever derricks are used for hoisting structural steel or other materials, two-way radio, telephone or other approved signals shall be used unless manual signals are most appropriate.

F - Protection of Signal Devices - Proper practical safe housing, casing or tube shall be provided for any and every means, method, appliance or equipment employed to transmit or give signals, directing work or operation of any and various devices in connection with work being done by Iron Workers.

G - Elevator Shaft Protection - No workman will be permitted to work in an elevator shaft while car is in operation. The first floor beneath and the first floor above workmen working shall be planked safely in all elevator shafts.

H - **Isolated Areas** - No Iron Worker will be required or permitted to work in an isolated hazardous area by himself where he may be cut off from immediate assistance in the event of an emergency.

I - **Welding and Burning** - All Welders using automatic or semiautomatic equipment and/or Welders welding continuously, will be provided with filtered air, vacuum pickup system or any other suitable device when welding fumes, smoke and inadequate ventilation cause a health hazard. Safety equipment consisting of a welding hood, protective leathers and gloves will be issued for the Welder's use and shall be returned to the individual employer upon termination of the employee. No Welder will be required to weld continuously below floor level when a scaffold is not provided.

J - **Floats** - All floats shall be not less than 3' x 6' x 3/4" in size, when possible and practical, and supporting ropes shall be 1" manila rope or the equivalent. The Personal Fall Arrest System must be worn at all times when working on floats.

K — **Overhead Cranes** — When Iron Workers are performing work in or about overhead crane rails and the cranes are actively in operation, one or more Iron Workers shall be provided in a suitable location to serve as safety men for the protection of the workmen.

L - **Tripping Hazard** - All structural members having projections such as studs, etc., will be covered with planking or other suitable covering prior to erection to prevent the possibility of a tripping hazard. Structural steel members which do not have any projection above the flat surface of said members, such as studs, shear connectors, etc., will be excepted.

M - **Safety Equipment** - Iron Workers shall wear hard hats at all times and Personal Fall Arrest Systems when required. Such safety equipment shall be supplied by the individual employer to be returned when the employee is terminated.

N - 1 - **Bar Joists** - Before bar joists can be set in bundles or singly on the supporting beams, the bar joist must be secured by bolting or welding to the supporting beams at each span center when possible or practical to ensure safety for further placement of joists. The remaining joists must be secured to the supporting beams as they are spread.

N - 2 - **Decking** - Metal decking where used in lieu of wood planking shall be of equivalent strength and shall be laid tightly and secured to prevent movement in accordance with current Cal-O.S.H.A. standards.

O - **Construction Over Water** - When structural steel is being erected for new bridges, or, repair work of a hazardous nature on an existing bridge is being constructed over water, a power boat equipped with life saving equipment will be manned by an Iron Worker while such work is being performed consistent with the intent of current Cal-O.S.H.A. standards.

P - **High Voltage** - When workmen are employed around high voltage on crane hot rails, the power shall be disconnected a safe distance from the nearest workman. Safety warning devices, such as lights, bells, horns or other type warning signals, are to be used. Crane stops are to be secured to crane rails while work is being performed.

Q - **Sky Climber** - Iron Workers working from a sky climber type scaffold shall perform such work in accordance with the California O.S.H.A. or State of Nevada safety orders.

R - **Safety Orders** - The individual employer and the individual employee agree to comply with all applicable safety and health laws, rules and regulations in connection with the Occupational Safety and Health Act (O.S.H.A.) and applicable laws enacted by the States of California and Nevada.

In accordance with the requirements of the Occupational Safety and Health Act of 1970, it shall be the sole responsibility of the Employer to insure the safety and health of its employees. Nothing in this Agreement will make the Union liable to any employees or to any other persons in the event that injury or accident occurs.

The safety and health standards and rule contained herein are minimum standards and are not intended to imply that the Union objects to the establishment and imposition by the Employer of additional or more stringent rules to protect the health and safety of the employees. It shall be the sole responsibility of the Employer to insure compliance with safety and health standards and rules.

S - **Ladders** - On multi-story erection, a ladder or other suitable means of access to a semi-trailer truck, as determined by the employer, shall be provided.

T - The individual employer shall be solely responsible for the implementation of and responsibility for safety provisions, laws, rules and regulations at the job site.

SECTION 26. Business Agent on Job

The Business Agent of the Union shall be permitted on all jobs but will in no way interfere with the men during working hours unless permission is granted by the individual employer.

On projects under military guard, the individual employer will cooperate as far as regulations will permit.

SECTION 27. Job Steward

A steward shall be a working journeyman Iron Worker, appointed by the Business Agent, who shall, in addition to his work as a journeyman, be permitted to perform during working hours such of his union duties as can not be performed at other times. The Union agrees such duties shall be performed as expeditiously as possible and the Employers agree that stewards shall be allowed a reasonable amount of time for the performance of such duties. Such duties shall consist of enforcement of the provisions of this Agreement. The steward shall promptly take care of the personal needs (non-medical) of a workman injured on the job without any loss of time and/or pay during his regular scheduled shift on the day the injury occurs. In no event will the work of an individual employer be delayed or interrupted because of the lack of a steward on the job under these circumstances. The Business Agent shall notify the individual employer in writing of the appointment of such steward. The job steward will be notified prior to the time employees are to be laid off. In no event shall an individual employer discriminate against a steward, or lay him off, or discharge him on account of any action taken by him in the proper performance of his union duties. Further, when Iron Workers are laid off, the job steward will be the last man laid off and will be included in all overtime worked, providing he is capable of performing the work in question. On all overtime work and work on Saturdays, Sundays and holidays,

the individual employer or his representative shall advise the job steward in advance of such work.

SECTION 28. Grievance Procedure

Boards of Adjustment shall be created for the settlement of disputes, except jurisdictional disputes, which shall be composed of two (2) representatives selected by the Union and two (2) representatives selected by the Employers. Members of a Board of Adjustment shall be affiliated neither with the Local Union or the individual employer involved in the specific grievance hearing. One of the two representatives selected by the Union shall be the President of the District Council of Iron Workers or his designated representative and the representatives of the individual signatory employers shall be selected by the Employers Association involved. It is agreed all individual employers covered by this Agreement will be represented by one of the Associations and such individual employers shall reimburse the Association selected, actual costs incurred in preparation for such representation. Said Board shall organize within three (3) working days or as soon as practical and shall elect a Chairman and a Secretary and shall adopt rules of procedure which shall bind the contracting parties. Said Board shall have the power to adjust any differences that may arise regarding the meaning and enforcement of this Agreement. Within fifteen (15) days of the time any dispute is referred to it by either party, said Board shall meet to consider such dispute. If the Board cannot agree on any matter referred to it, the members thereof within three (3) days shall choose a fifth member who shall have no business or financial connection with either party. The decisions of said Boards shall be determined by a majority of their members and, pending such decisions, work shall be continued in accordance with the provisions of this Agreement. Any and all expenses incurred by Boards of Adjustment created under this Section 28, including but not limited to the expense of employing a fifth member, shall be borne by the California Field Iron Workers Administrative Trust. No proceeding hereunder based on any dispute, complaint or grievance herein provided for, shall be recognized unless called to the attention of the individual employer or the Local Union involved in writing within fifteen (15) days after the alleged violation is committed. Copies of decisions of the Boards shall be mailed to the individual employer involved in this dispute, the appropriate Association, the California Ironworker Employers Council and the Union.

It is agreed expressly the provisions of Sections 28 and 29 of this Agreement shall not be applicable with respect to the refusal by an individual employer to comply with the provisions of Sections 10-F, 11, 12, 13, 14A, 14B, 14C, 15 and 16 of this Agreement.

SECTION 29. Strikes and Lockouts

A - It is agreed mutually there shall be no strikes authorized by the Union and no lockouts authorized by the Employers, or individual employer, except for the refusal of either party to submit to arbitration, in accordance with Section 28, or failure on the part of either party to carry out the award of the Joint Adjustment Board.

B - Every facility of each of the parties hereto is hereby pledged to overcome immediately any such situation; provided, however, it shall not be a violation of any provision of this Agreement for any person covered by this Agreement to refuse to cross or work behind any picket line established by an International Union affiliated with the Building and Construction Trades Department of the American Federation of Labor Congress of Industrial Organizations or a Local Union thereof, or the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or a Local Union thereof, which picket line has been authorized or sanctioned by the local Building and Construction Trades Council having jurisdiction over the area in which the job is located after the individual employer involved has been notified and has had an opportunity to be heard. Said notice shall be in writing and mailed to the individual employer involved to his last known address.

SECTION 30. Jurisdictional Disputes

A - The individual employer or his representative agrees to make work assignments consistent with decisions of record, agreements of record and, in the absence of such decisions or agreements of record, based on established trade and area practice.

B - In the event of jurisdictional disputes between Local Unions of the Iron Workers as to the jurisdiction of the work performed by the Contractors and/or Subcontractors and the Unions signatory to this Agreement, this dispute shall be referred to and settled by the International Association of Bridge, Structural, Ornamental and Re-

inforcing Iron Workers. Pending the settlement of any such dispute, the original work assignment made by the individual employer shall remain in effect and the work in question shall proceed without interruption.

C - In the event of any dispute as to jurisdiction of work covered by the terms of this Agreement being claimed by other unions than those affiliated with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, this dispute shall be referred to the International Unions involved for determination by whatever procedures they may adopt and the work shall proceed as assigned by the individual employer until such determination by the International Unions has been made. A decision rendered by said International Unions in any given jurisdictional determination shall be implemented immediately by the individual employer involved.

D - The parties hereto agree there shall be no slow down or stoppage of work and each agrees the decision of the authorities as set forth in this Section 30 shall be final and binding upon them.

SECTION 31. Scope of Agreement

This Agreement contains all the provisions agreed upon by the Employers and Union. Neither the Employers nor the Union will be bound by rules, regulations or agreements not herein contained except interpretations or decisions of the Joint Adjustment Board pursuant to Section 28.

SECTION 32. Savings Clause

Should any part of or any provision herein contained be rendered or declared invalid by reason of any existing or subsequently enacted legislation, or by any decree of a court of competent jurisdiction, the remaining provisions of this Agreement shall, nevertheless, remain in full force and effect, unless the parts so held invalid are wholly inseparable from the remaining portions of this Agreement. The parties agree if and when any provisions of this Agreement are so rendered or declared invalid they will then promptly enter into negotiations concerning the substance thereof. It is the intent of the parties to this Agreement that each and every, all and singular, of the provisions of this Agreement be fully in accordance with Federal and State Law. Its interpretation and the interpretation of each of the provisions of this Agree-

ment is therefore intended to apply no broader than that permitted by law.

SECTION 33. Geographic and Market Conditions

The parties to this Agreement recognize the necessity of assuring the competitive position of the parties within the Industry during the term of this Agreement. Consistent with that recognition, the parties will continually monitor the effectiveness of this Agreement relative to specific geographic or market areas and will endeavor, by mutual agreement, to initiate such modifications to the Agreement during its term as may be necessary to assure the work opportunities of the individual employer and the competitive position of the individual employer.

To that end a Committee consisting of three (3) members appointed by the Employers and three (3) members appointed by the District Council of Iron Workers, one of which will be a representative appointed by the Business Manager from the affected Local Union. The Committee will meet not less than quarterly at a mutually agreed on time and place to review requests from the Union and/or individual employer for relief or other modifications to the Agreement in order to respond to those markets which are shown to be lost or substantially lost to the non-signatory segment of the Industry.

Any modifications made to the Agreement by the Committee shall be reviewed biannually to determine the effectiveness of the changes. The individual employer and effected Local Union shall be responsible to provide market data in order to determine whether such modifications have been effective.

SECTION 34. Duration and Termination

This Agreement and any amendments thereto made as provided for herein shall remain in full force and effect until midnight December 31, 2024 and, unless written notice be given by either party to the other at least one hundred twenty (120) days but not more than one hundred fifty (150) days prior to such date of a desire to change, modify, amend, supplement, renew, extend or terminate this Agreement, it shall continue in full force and effect an additional year thereafter and shall remain in effect from year to year thereafter unless notice is given in writing by either party to

the other at least one hundred twenty (120) days but not more than one hundred fifty (150) days prior to the expiration of such contract year.

Any notice prior to December 31, 2024 or any subsequent anniversary year as provided for in this Section, given by either party to the other, expressing a desire to change, modify, amend, supplement, renew or extend the provisions of this Agreement, shall not have the effect of terminating this Agreement at that time. In the event no agreement is reached by December 31, 2024 or December 31st of any subsequent year, either party may give written notice of intention to terminate the Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date and year first above written, in the City of Pinole, State of California.

For the Union	For the Employers
District Council of Iron Workers of the State of California and Vicinity David Osborne	Western Steel Council Greg McClelland
Local Union 118 Karl Pineo	Industrial Contractors, UMIC, Inc. Michael Vlaming
Local Union 155 Jesus Castaneda	Associated General Contractors of California, Inc. Peter Tateishi
Local Union 229 Beau Coleman	Steel Fabricators Association of Southern California, Inc. Garry Title
Local Union 377 Charles Hernandez	United Contractors Victor Sella
Local Union 378 Jason Gallia	Southern California Contractors Association, Inc. Mike Roddy
Local Union 416 Vidal Zambrano	Association of Construction Employers Michael Walton
Local Union 433 Keith Harkey	United General Contractors, Inc. Mitchell G. Weiss
	Nevada Chapter of the Associated General Contractors of America, Inc. Craig Madole

CIRCULAR LETTER NO. 568

TO ALL AFFILIATED OUTSIDE ERECTION LOCAL UNIONS:

GREETINGS:

Due to the many inquiries received from our affiliated outside erection local unions relative to clarification of Paragraph A, Section 15, Article XVIII-A, which is captioned "General Working Rules of the International Association of Bridge, Structural and Ornamental Iron Workers", it has been decided that this letter of clarification be directed to all outside erection local unions in order to eliminate any future misunderstandings.

Paragraph A of Section 15, Article XVIII-A, states as follows:

"No less than six (6) men and a foreman shall be employed around any guy or stiff leg derrick used on steel erection and, on all mobile or power operated rigs of any description no less than four (4) men and a foreman shall be employed."

The clarification requested deals with the portion of the above quoted section which states as follows:

"On all mobile or power operated rigs of any description no less than four (4) men and a foreman shall be employed."

The above quoted section provides for the number of men to be used on a guy or stiff leg derrick and on all mobile or power operated rigs when such equipment is used on steel erection. On all other work operations coming under the jurisdiction of this International Association where members of this Association are employed a sufficient number of men will be employed in order that the work involved can be performed in a safe and expeditious manner. This means that an employer will not be required to use four (4) men and a foreman on work operations not requiring this number of men. It also means that on rigging or unloading operations where more than four men and a foreman are required, such additional members will be employed.

It is of the utmost importance that the officers and members of this International Association exercise good judgment in determining the proper number of members to be used on certain work operations where mobile or power operated rigs are used. The safety of the members employed must be considered as well as the possible over-manning of a specific work operation which, in many instances, has resulted in such work operations being assigned to other crafts and subsequently resulted in jurisdictional disputes.

This letter should be read to the membership of your local union at the next regular meeting and all job stewards must be acquainted with the subject matter contained herein.

Fraternally yours,

J. H. Lyons
General President

J. R. Downs
General Secretary

**SCHEDULE
APPRENTICES HOURLY
WAGE RATES
AND
JOURNEYMAN IRON WORKERS
TOTAL HOURLY WAGE &
FRINGE BENEFIT PACKAGE**

TOTAL HOURLY WAGE FRINGE BENEFIT PACKAGE FOR JOURNEYMEN IRONWORKERS AND APPRENTICES
REINFORCING, STRUCTURAL, ORNAMENTAL

ZONE 1

City and County of San Francisco

Journeymen	Effective	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WCTF	Total
	07/01/21	\$46.23	\$5.40	\$4.06	\$10.05	\$13.32	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$80.185
Apprentices	Effective	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WCTF	Total
1st Period Apprentice 50%	07/01/21	\$23.12	\$5.40	n/a	\$ 5.50	n/a	\$0.72	n/a	n/a	\$0.00	\$0.035	\$34.775
2nd Period Apprentice 55%	07/01/21	\$25.43	\$5.40	n/a	\$10.05	n/a	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$42.005
3rd Period Apprentice 60%	07/01/21	\$27.74	\$5.40	n/a	\$10.05	\$3.33	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$47.645
4th Period Apprentice 65%	07/01/21	\$30.05	\$5.40	\$2.03	\$10.05	\$3.33	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$51.985
5th Period Apprentice 75%	07/01/21	\$34.67	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$59.935
6th Period Apprentice 80%	07/01/21	\$36.98	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$62.245
7th Period Apprentice 90%	07/01/21	\$41.61	\$5.40	\$4.06	\$10.05	\$9.99	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$72.235
8th Period Apprentice 95%	07/01/21	\$43.92	\$5.40	\$4.06	\$10.05	\$9.99	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$74.545

KEY - Apprent = Apprenticeship Fund **Admin** = Administrative Trust **LMCT** = Labor Management Cooperative Trust **IMPACT** = Ironworker Management Progressive Action Cooperative Trust **WCTF** = Workers Compensation Trust Fund **Annuity** = Defined Contribution Pension Fund **VACATION** = Vacation/Personal Time Off (PTO)

*Wage rate includes the conversion of the daily Congestion Zone to an hourly wage rate of \$1.63.

TOTAL HOURLY WAGE FRINGE BENEFIT PACKAGE FOR JOURNEYMEN IRONWORKERS AND APPRENTICES
REINFORCING, STRUCTURAL, ORNAMENTAL

ZONE 2

Alameda, Contra Costa, San Mateo and Santa Clara Counties

Journeymen	Effective	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WCTF	Total
	07/01/21	\$45.73	\$5.40	\$4.06	\$10.05	\$13.32	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$79.685
Apprentices	Effective	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WCTF	Total
1st Period Apprentice 50%	07/01/21	\$22.87	\$5.40	n/a	\$ 5.50	n/a	\$0.72	n/a	n/a	\$0.00	\$0.035	\$34.525
2nd Period Apprentice 55%	07/01/21	\$25.15	\$5.40	n/a	\$10.05	n/a	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$41.725
3rd Period Apprentice 60%	07/01/21	\$27.44	\$5.40	n/a	\$10.05	\$3.33	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$47.345
4th Period Apprentice 65%	07/01/21	\$29.72	\$5.40	\$2.03	\$10.05	\$3.33	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$51.655
5th Period Apprentice 75%	07/01/21	\$34.30	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$59.565
6th Period Apprentice 80%	07/01/21	\$36.58	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$61.845
7th Period Apprentice 90%	07/01/21	\$41.16	\$5.40	\$4.06	\$10.05	\$9.99	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$71.785
8th Period Apprentice 95%	07/01/21	\$43.44	\$5.40	\$4.06	\$10.05	\$9.99	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$74.065

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*Wage rate includes the conversion of the daily Congestion Zone to an hourly wage rate of \$1.13.

TOTAL HOURLY WAGE FRINGE BENEFIT PACKAGE FOR JOURNEYMEN IRONWORKERS AND APPRENTICES
REINFORCING, STRUCTURAL, ORNAMENTAL

ZONE 3

Los Angeles City including the cities of Baldwin Hills, Beverly Hills, Burbank, Culver City, El Segundo, Gardena, Hawthorne, Hermosa Beach, Inglewood, Lawndale, Lennox, Lomita, Manhattan Beach, Marina Del Rey, Rancho Palos Verdes, Redondo Beach, Rolling Hills Estates, San Fernando, Santa Monica, Torrance, Universal City, West Hollywood, Westwood Veterans Affairs

Journeyman	Effective 07/01/21	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WCTF	Total
		\$43.88	\$5.40	\$4.06	\$10.05	\$13.32	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$77.835
Apprentices	Effective	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WCTF	Total
1st Period Apprentice 50%	07/01/21	\$21.94	\$5.40	n/a	\$ 5.50	n/a	\$0.72	n/a	n/a	\$0.00	\$0.035	\$33.595
2nd Period Apprentice 55%	07/01/21	\$24.13	\$5.40	n/a	\$10.05	n/a	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$40.705
3rd Period Apprentice 60%	07/01/21	\$26.33	\$5.40	n/a	\$10.05	\$3.33	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$46.235
4th Period Apprentice 65%	07/01/21	\$28.52	\$5.40	\$2.03	\$10.05	\$3.33	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$50.455
5th Period Apprentice 75%	07/01/21	\$32.91	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$58.175
6th Period Apprentice 80%	07/01/21	\$35.10	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$60.365
7th Period Apprentice 90%	07/01/21	\$39.49	\$5.40	\$4.06	\$10.05	\$9.99	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$70.115
8th Period Apprentice 95%	07/01/21	\$41.69	\$5.40	\$4.06	\$10.05	\$9.99	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$72.315

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*Wage rate includes the conversion of the daily Congestion Zone to an hourly wage rate of \$0.63.

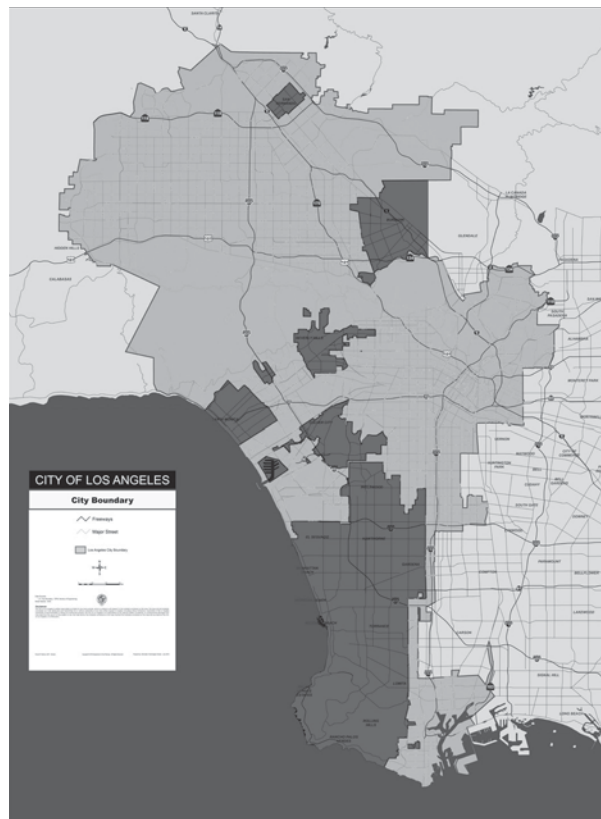
TOTAL HOURLY WAGE FRINGE BENEFIT PACKAGE FOR JOURNEYMEN IRONWORKERS AND APPRENTICES
REINFORCING, STRUCTURAL, ORNAMENTAL

ZONE 4

California Counties of Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Humboldt, Imperial, Kern, Kings, Lake, Los Angeles (portions not covered in Zone 3), Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Ventura, Yolo, Yuba **Nevada Counties** of Carson City, Clark, Douglas, Nye, Storey, Washoe

Journeymen	Effective 07/01/21	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WC.TF	Total
		\$43.00	\$5.40	\$4.06	\$10.05	\$13.32	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$76.955
Apprentices	Effective	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WC.TF	Total
1st Period Apprentice 50%	07/01/21	\$21.50	\$5.40	n/a	\$ 5.50	n/a	\$0.72	n/a	n/a	\$0.00	\$0.035	\$33.155
2nd Period Apprentice 55%	07/01/21	\$23.65	\$5.40	n/a	\$10.05	n/a	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$40.225
3rd Period Apprentice 60%	07/01/21	\$25.80	\$5.40	n/a	\$10.05	\$3.33	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$45.705
4th Period Apprentice 65%	07/01/21	\$27.95	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$49.885
5th Period Apprentice 75%	07/01/21	\$32.25	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$57.515
6th Period Apprentice 80%	07/01/21	\$34.40	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$59.665
7th Period Apprentice 90%	07/01/21	\$38.70	\$5.40	\$4.06	\$10.05	\$9.99	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$69.325
8th Period Apprentice 95%	07/01/21	\$40.85	\$5.40	\$4.06	\$10.05	\$9.99	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$71.475

KEY - Apprenticeship Fund Admin = Administrative Trust **LMCT** = Labor Management Cooperative Trust **IMPACT** = Ironworker Management Progressive Action Cooperative Trust **WC.TF** = Workers Compensation Trust Fund **Annuity** = Defined Contribution Pension Fund **VACATION** = Vacation/Personal Time Off (PTO)



TOTAL HOURLY WAGE FRINGE BENEFIT PACKAGE FOR JOURNEYMEN IRONWORKERS AND APPRENTICES
REINFORCING, STRUCTURAL, ORNAMENTAL

ZONE 5

California Counties of Alpine, Del Norte, Inyo, Lassen, Modoc, Mono, Siskiyou, Trinity
Nevada Counties of Churchill, Esmeralda, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing

*Excluding all renewable energy and energy storage new construction projects, which shall be considered under the wage and fringe benefits as indicated in Zone 4.

Journeymen	Effective	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WCCTF	Total
	07/01/21	\$41.00	\$5.40	\$4.06	\$10.05	\$13.32	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$74.955
Apprentices	Effective	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WCCTF	Total
1st Period Apprentice 50%	07/01/21	\$20.50	\$5.40	n/a	\$ 5.50	n/a	\$0.72	n/a	n/a	\$0.00	\$0.035	\$32.155
2nd Period Apprentice 55%	07/01/21	\$22.55	\$5.40	n/a	\$10.05	n/a	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$39.125
3rd Period Apprentice 60%	07/01/21	\$24.60	\$5.40	n/a	\$10.05	\$3.33	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$44.505
4th Period Apprentice 65%	07/01/21	\$26.65	\$5.40	\$2.03	\$10.05	\$3.33	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$48.585
5th Period Apprentice 75%	07/01/21	\$30.75	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$56.015
6th Period Apprentice 80%	07/01/21	\$32.80	\$5.40	\$2.03	\$10.05	\$6.66	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$58.065
7th Period Apprentice 90%	07/01/21	\$36.90	\$5.40	\$4.06	\$10.05	\$9.99	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$67.525
8th Period Apprentice 95%	07/01/21	\$38.95	\$5.40	\$4.06	\$10.05	\$9.99	\$0.72	\$0.03	\$0.34	\$0.00	\$0.035	\$69.575

KEY - Apprent = Apprenticeship Fund **Admin** = Administrative Trust **LMCT** = Labor Management Cooperative Trust **IMPACT** = Ironworker Management Progressive Action Cooperative Trust **WCCTF** = Workers Compensation Trust Fund **Annuity** = Defined Contribution Pension Fund **VACATION** = Vacation/Personal Time Off (PTO)

TOTAL HOURLY WAGE FRINGE BENEFIT PACKAGE FOR FENCE ERECTOR JOURNEYMEN IRONWORKERS AND APPRENTICES

**ALL AREAS OF CALIFORNIA AND NEVADA - FENCE ERECTOR
COVERED BY THE COLLECTIVE BARGAINING AGREEMENT**

Journeyman Fence Erector	Effective	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WCTF	Total
	07/01/21	\$38.08	\$4.02	\$3.51	\$7.88	\$8.99	\$0.51	\$0.03	\$0.01	\$0.00	\$0.035	\$63.065
Apprentice Fence Erector	Effective	Wage	Vacation	Annuity	Welfare	Pension	Apprent	Admin	LMCT	IMPACT	WCTF	Total
1st Period Apprentice 50%	07/01/21	\$19.04	\$4.02	n/a	\$5.50	n/a	\$0.51	n/a	n/a	\$0.00	\$0.035	\$29.105
2nd Period Apprentice 55%	07/01/21	\$20.94	\$4.02	n/a	\$7.88	n/a	\$0.51	\$0.03	\$0.01	\$0.00	\$0.035	\$33.425
3rd Period Apprentice 60%	07/01/21	\$22.85	\$4.02	n/a	\$7.88	\$2.25	\$0.51	\$0.03	\$0.01	\$0.00	\$0.035	\$37.585
4th Period Apprentice 65%	07/01/21	\$24.75	\$4.02	\$1.76	\$7.88	\$2.25	\$0.51	\$0.03	\$0.01	\$0.00	\$0.035	\$41.245
5th Period Apprentice 75%	07/01/21	\$28.56	\$4.02	\$1.76	\$7.88	\$4.50	\$0.51	\$0.03	\$0.01	\$0.00	\$0.035	\$47.305
6th Period Apprentice 80%	07/01/21	\$30.46	\$4.02	\$1.76	\$7.88	\$4.50	\$0.51	\$0.03	\$0.01	\$0.00	\$0.035	\$49.205
7th Period Apprentice 90%	07/01/21	\$34.27	\$4.02	\$3.51	\$7.88	\$6.74	\$0.51	\$0.03	\$0.01	\$0.00	\$0.035	\$57.005
8th Period Apprentice 95%	07/01/21	\$36.18	\$4.02	\$3.51	\$7.88	\$6.74	\$0.51	\$0.03	\$0.01	\$0.00	\$0.035	\$58.915

KEY - Apprent = Apprenticeship Fund **Admin** = Administrative Trust **LMCT** = Labor Management Cooperative Trust **IMPACT** = Ironworker Management Progressive Action Cooperative Trust **WCTF** = Workers Compensation Trust Fund **Annuity** = Defined Contribution Pension Fund **VACATION** = Vacation/Personal Time Off (PTO)

**JURISDICTIONAL
BOUNDRIES
AND
GEOGRAPHICAL DESCRIPTIONS
IRON WORKERS LOCAL UNIONS**

118, SACRAMENTO

155, FRESNO

229, SAN DIEGO

377, SAN FRANCISCO

378, OAKLAND

416, LOS ANGELES

433, LOS ANGELES

**IRON WORKERS
LOCAL UNION 118**

(916) 646-6976

**GEOGRAPHICAL DESCRIPTION
IRON WORKERS LOCAL UNION 118**

The southern border of Local 118 is described as a line drawn from Ceres, California on Highway 99 eastward through Chinese Camp, California, thence to Sweetwater Nevada, continuing east on this line to a point which is the easterly limits of the jurisdiction of Locals 118 and 155.

The northern boundary of Local 118 is recognized as the California-Oregon state line. The western boundary, of Local 118 starts at the junction of Highway 199 and the California-Oregon state line and extends on a straight line through Wilbur Springs to Highway 20, thence to Vacaville in Solano County, thence to Rio Vista, Solano County thence to Ceres, Stanislaus County where it joins the jurisdictional boundary line of Local Union 155, Fresno, California. It is understood that the Travis Air Force Base will be within the Jurisdiction of Local Union 378 and that the cities of Vacaville, Rio Vista, Manteca, Modesto, and Ceres will be within the jurisdiction of Local 118.

**IRON WORKERS
LOCAL UNION 155**

(559) 251-7388

**GEOGRAPHICAL DESCRIPTION
IRON WORKERS LOCAL UNION 155**

The southernmost boundary will also be the line previously described as the northernmost boundary of Locals 416 and 433. The northern boundary of Local 155 starts on a point on the Pacific Ocean on a straight line drawn through the towns of Gonzales and Ceres, California, thence on a straight line from Ceres through Chinese Camp, California, and thence to Sweetwater, Nevada, thence to a point two miles south of Quartz Mountain Nevada and continuing on this line east to a point which is the easterly limits of the jurisdiction of Locals 155 and 118. It is agreed that the towns of Newman and Keyes are within the jurisdiction of Local 155. The town of Gonzales is within the jurisdiction of Local 377. The town of Crows Landing is within the jurisdiction of Local 378. The town of Ceres is within the jurisdiction of Local 118.

**IRON WORKERS
LOCAL UNION 229**

(858) 571-5238

**GEOGRAPHICAL DESCRIPTION
IRON WORKERS LOCAL UNION 229**

The southernmost border to be the Mexican border. The northern boundary of Local 229 and the southern boundary of Local 433 to be described as follows: a line extending from San Clemente on the Pacific Ocean east to northernmost boundary line of San Diego County, thence on a straight line east through the town of Mecca, thence on a straight line through the town of Ripley, California, to the Colorado River. It is further understood that the San Clemente Islands, the towns of San Clemente, Mecca and Ripley are within the jurisdiction of Local 229.

**IRON WORKERS
LOCAL UNION 377**

(415) 285-3880

**GEOGRAPHICAL DESCRIPTION
IRON WORKERS LOCAL UNION 377**

The jurisdiction of Local 377 is bounded on the West by the Pacific Ocean, and on the extreme North by the California-Oregon state line. The easterly boundary of Local 377 is described as a straight line starting at the junction of Highway 199 and the California-Oregon state line and extending south through Wilbur Springs to Highway 20. The boundary line between Locals 377 and 378 then extends westward along Highway 20 to the junction of Highway 20 and Highway 101. From this junction, southward, Highway 101 continues to be the dividing line between 377 and 378 until 101 crosses the San Antonio Creek on the Marin-Sonoma County line. From that point in a southerly direction the dividing line between 377 and 378 divides the Bay and follows the common County lines between (1) Sonoma-Marin Counties, (2) Marin and Contra Costa Counties, (3) San Francisco and Alameda Counties, (4) San Mateo and Alameda Counties, (5) Santa Clara and Alameda Counties, (6) Santa Clara and Stanislaus Counties, (7) Santa Clara and Merced Counties to Pacheco Pass, which is also a point on the straight line between Gonzales and Ceres (See Local 155). It is agreed that Local 377's jurisdiction includes all of Santa Clara County and all work done on Highway 101 between and including Gonzales, California and the California-Oregon state line.

**IRON WORKERS
LOCAL UNION 378**

(707) 746-6100

**GEOGRAPHICAL DESCRIPTION
IRON WORKERS LOCAL UNION 378**

The northern boundary of Local 378 follows the south side of Highway 20 from Wilbur Springs to the junction of Highway 20 and Highway 101, from that point south Highway 101 is the dividing line between Local 377 and 378 until Highway 101 crosses San Antonio Creek on the Marin-Sonoma County Line. From that point in a southerly direction the dividing line between 377 and 378 divides the bay and follows the common county lines between (1) Sonoma-Marin Counties, (2) Marin and Contra Costa Counties, (3) San Francisco and Alameda Counties, (4) San Mateo and Alameda Counties, (5) Santa Clara and Alameda Counties, (6) Santa Clara and Stanislaus Counties, (7) Santa Clara and Merced Counties to Pacheco Pass. From Pacheco Pass in a northerly direction and on a straight line to Ceres on Highway 99. The easterly boundary of Local 378 is described as a straight line extending from Wilbur Springs to Vacaville in Solano County thence to Rio Vista, Solano County, thence to Ceres, California where it joins the jurisdictional boundary of Locals 155 and 118.

It is agreed that the Travis Air Force Base, the town of Crows Landing and any work performed on Highway 20 between Wilbur Springs and Highway 101 is within the jurisdiction of Local 378.

**IRON WORKERS
LOCAL UNION 416
(562) 868-1251**

**IRON WORKERS
LOCAL UNION 433
(626) 964-2500**

**GEOGRAPHICAL DESCRIPTION
IRON WORKERS
LOCAL UNIONS 416 and 433**

The southernmost boundary to be the same as the northernmost boundary of Local 229.

The northern boundary of Local 416 and 433 is as follows: a straight line from the Pacific Ocean through the town of Orcutt to Grapevine Station on Highway 99, thence on a straight line to the town of Tehachapi, then on a straight line to the junction of Highway 14 and Highway 395, thence on Highway 14 to Inyo County line, thence northeast through junction of Highway 190 and Highway 127 and Death Valley Junction, thence to Nevada State line, thence continuing east on this line to the easterly limits of the jurisdiction of Local Unions 416 and 433. It is understood the towns of Orcutt, Grapevine, and Tehachapi are in the jurisdiction of Local 155.

Death Valley Junction is within the jurisdiction of Locals 416 and 433. The jurisdiction of Locals 416 and 433 also covers all of Clark County and portions of Lincoln and Nye Counties in Nevada as per letter from General Executive Board. Catalina Island and the Santa Barbara Islands are also within the jurisdiction of Local 416 and 433.

**IRONWORKER EMPLOYEES'
BENEFIT CORPORATION
AND
CALIFORNIA FIELD IRONWORKERS
TRUST FUNDS**

**131 North El Molino Avenue, Suite 330
Pasadena, CA 91101
(626) 792-7337**

Risë Spiegel, Executive Director

**IRONWORKER EMPLOYEES' BENEFIT
CORPORATION
BOARD OF DIRECTORS**

Union	Management
David S. Osborne, <i>Vice President</i> District Council	Greg McClelland, <i>President</i> Western Steel Council
Jason Sangster Local Union 75	Dennis Andersen Pacific Erectors, Inc.
Karl Pineo Local Union 118	Rich Barbour The Herrick Corporation
Jesus Castaneda Local Union 155	Charles Krebs Rebar Engineering, Inc.
Beau Coleman Local Union 229	Rich Martini The Conco Companies
Charles Hernandez Local Union 377	Dave McEuen California Erectors, Inc.
Jason Gallia Local Union 378	Dylan Olson Olson & Co. Steel
Vidal Zambrano Local Union 416	Michael Vlaming Industrial Contractors, Inc.
Keith Harkey Local Union 433	Daniel Welsh Washington Iron Works, Inc.

**APPRENTICESHIP TRUST
BOARD OF TRUSTEES
(800) 527-4613**

Union	Management
David S. Osborne, <i>Chairman</i> District Council	Dave McEuen, <i>Chairman</i> California Erectors, Inc.
Jason Sangster Local Union 75	Dennis Andersen Pacific Erectors, Inc.
Karl Pineo Local Union 118	Richard Barbour The Herrick Corporation
Jesus Castaneda Local Union 155	Brendan Carter AGC of California, Inc.
Beau Coleman Local Union 229	Charles Krebs Rebar Engineering, Inc.
Charles Hernandez Local Union 377	Rich Martini The Conco Companies
Jason Gallia Local Union 378	Greg McClelland Western Steel Council
Vidal Zambrano Local Union 416	David Perkins Pacific Steel Group
Keith Harkey Local Union 433	Daniel Welsh Washington Iron Works, Inc.

DEFINED CONTRIBUTION PENSION FUND
(Annuity)
BOARD OF TRUSTEES
(800) 527-4613

Union	Management
David S. Osborne, <i>Chairman</i> District Council	Michael Vlaming, <i>Chairman</i> Industrial Contractors, Inc.
Jason Sangster Local Union 75	Dennis Andersen Pacific Erectors, Inc.
Karl Pineo Local Union 118	Richard Barbour The Herrick Corporation
Jesus Castaneda Local Union 155	Charles Krebs Rebar Engineering, Inc.
Beau Coleman Local Union 229	Rich Martini The Conco Companies
Charles Hernandez Local Union 377	Greg McClelland Western Steel Council
Jason Gallia Local Union 378	Dave McEuen California Erectors, Inc.
Vidal Zambrano Local Union 416	Dylan Olson Olson & Co. Steel
Keith Harkey Local Union 433	Daniel Welsh Washington Iron Works, Inc.

**CALIFORNIA FIELD IRONWORKERS
LABOR MANAGEMENT
COOPERATIVE TRUST**

**Greg McClelland, Administrator
(916) 784-9118**

Union	Management
David S. Osborne, <i>Chairman</i> District Council	Dave McEuen, <i>Chairman</i> California Erectors, Inc.
Jason Sangster Local Union 75	Dennis Andersen Pacific Erectors, Inc.
Karl Pineo Local Union 118	Richard Barbour The Herrick Corporation
Jesus Castaneda Local Union 155	Brendan Carter AGC of California, Inc.
Beau Coleman Local Union 229	Charles Krebs Rebar Engineering, Inc.
Charles Hernandez Local Union 377	Rich Martini The Conco Companies
Jason Gallia Local Union 378	Dylan Olson Olson & Co. Steel
Vidal Zambrano Local Union 416	David Perkins Pacific Steel Group
Keith Harkey Local Union 433	Daniel Welsh Washington Iron Works, Inc.

PENSION TRUST BOARD OF TRUSTEES
(800) 527-4613

Union	Management
David S. Osborne, <i>Chairman</i> District Council	Daniel Welsh, <i>Chairman</i> Washington Iron Works, Inc.
Jason Sangster Local Union 75	Dennis Andersen Pacific Erectors, Inc.
Karl Pineo Local Union 118	Richard Barbour The Herrick Corporation
Jesus Castaneda Local Union 155	Charles Krebs Rebar Engineering, Inc.
Beau Coleman Local Union 229	Rich Martini The Conco Companies
Charles Hernandez Local Union 377	Greg McClelland Western Steel Council
Jason Gallia Local Union 378	Dave McEuen California Erectors, Inc.
Vidal Zambrano Local Union 416	Dylan Olson Olson & Co. Steel
Keith Harkey Local Union 433	Michael Vlaming Industrial Contractors, Inc.

VACATION TRUST BOARD OF TRUSTEES
(800) 527-4613

Union	Management
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Jason Sangster Local Union 75	Dennis Andersen Pacific Erectors, Inc
Jesus Castaneda Local Union 155	Richard Barbour The Herrick Corporation
Beau Coleman Local Union 229	Brendan Carter AGC of California, Inc.
Charles Hernandez Local Union 377	Charles Krebs Rebar Engineering, Inc.
Jason Gallia Local Union 378	Greg McClelland Western Steel Council
Vidal Zambrano Local Union 416	David Perkins Pacific Steel Group
Keith Harkey Local Union 433	Michael Vlaming Industrial Contractors, Inc.
David S. Osborne District Council	Daniel Welsh Washington Iron Works, Inc.

WELFARE TRUST BOARD OF TRUSTEES
(800) 527-4613

Union	Management
David S. Osborne, <i>Chairman</i> District Council	Greg McClelland, <i>Chairman</i> Western Steel Council
Jason Sangster Local Union 75	Dennis Andersen Pacific Erectors, Inc.
Karl Pineo Local Union 118	Richard Barbour The Herrick Corporation
Jesus Castaneda Local Union 155	Charles Krebs Rebar Engineering, Inc
Beau Coleman Local Union 229	Rich Martini The Conco Companies
Charles Hernandez Local Union 377	Dave McEuen California Erectors, Inc.
Jason Gallia Local Union 378	Dylan Olson Olson & Co. Steel
Vidal Zambrano Local Union 416	Michael Vlaming Industrial Contractors, Inc.
Keith Harkey Local Union 433	Daniel Welsh Washington Iron Works, Inc.

**WORKERS' COMPENSATION TRUST BOARD
OF TRUSTEES
(800) 527-4613**

Union	Management
David S. Osborne, <i>Chairman</i> District Council	Dave McEuen, <i>Chairman</i> California Erectors, Inc.
Jason Sangster Local Union 75	Dennis Andersen Pacific Erectors, Inc.
Karl Pineo Local Union 118	Richard Barbour The Herrick Corporation
Jesus Castaneda Local Union 155	Brendan Carter AGC of California, Inc.
Beau Coleman Local Union 229	Charles Krebs Rebar Engineering, Inc.
Charles Hernandez Local Union 377	Greg McClelland Western Steel Council
Jason Gallia Local Union 378	Dylan Olson Olson & Co. Steel
Vidal Zambrano Local Union 416	David Perkins Pacific Steel Group
Keith Harkey Local Union 433	Daniel Welsh Washington Iron Works, Inc.

**CALIFORNIA FIELD IRON WORKERS
ADMINISTRATIVE TRUST**

**Linda Mayrand, Administrator
(916) 930-9500**

**BOARD OF TRUSTEES
MANAGEMENT TRUSTEES ONLY**

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Rebar Engineering, Inc.

Richard Barbour, Secretary
The Herrick Corporation

Dennis Andersen
Pacific Erectors, Inc.

Brendan Carter
AGC of California, Inc.

Greg McClelland
Western Steel Council

Dylan Olson
Olson & Co. Steel

Michael Vlaming
Industrial Contractors, Inc.

Daniel Welsh
Washington Iron Works, Inc.

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has been paid for by the
**CALIFORNIA FIELD IRONWORKERS
ADMINISTRATIVE TRUST FUND**

EXHIBIT 9

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

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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](#).

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EXHIBIT 10

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

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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 11

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 12

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 13

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?

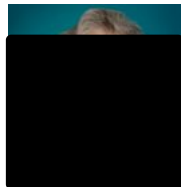
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by 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 14

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 15



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

March 12, 2025

CASE ASSUMPTIONS

Class Members	150
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	150
Subtotal Admin Only	\$4,634.03

Flat Fee Total \$4,500.00

For 150 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

Case: Vandermost v. Dywiday Systems, PAGA Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Emily Houg Ly

Firm: The Spivak Law Firm

Contact Number: (818) 205-9033

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

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

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.50	24		\$60.00
NCOA (USPS)	\$35.00	1		\$35.00
Total				\$495.00

* Up to 120 days after disbursement

Data Merger & Scrub / PAGA Letter & Check / Postage / Spanish Translation

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Spanish Translation	\$150.00	1		\$150.00
Data Merge & Duplication Scrub	\$0.09	150		\$13.50
PAGA Letter and Check Packet	\$1.00	150		\$150.00
Estimated Postage (up to 1 oz.)*	\$0.70	150		\$105.00
Total				\$518.50

* 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 PAGA Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Skip Tracing Undeliverables	\$0.75	38		\$28.13
Remail PAGA Packets	\$1.00	35		\$34.50
Estimated Postage	\$0.70	35		\$24.15
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$301.78

Case Management				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Case Manager	\$85.00	2		\$170.00
Total				\$335.00

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

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



Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	2	\$230.00
Remail Undeliverable Checks (Postage Included)	\$1.50	23	\$33.75
Case Associate	\$55.00	3	\$165.00
Reconcile Uncashed Checks	\$85.00	4	\$340.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	3	\$345.00
QSF Annual Tax Reporting *	\$700.00	1	\$700.00
(State Tax Reporting & Escheating Uncashed Checks to the State of CA included)			
Total			\$2,213.75

Estimate Total: \$4,634.03



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

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

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

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

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 16

Case Name: Vandermost v. Dywiday Systems
Tuesday, March 11, 2025

Requesting Attorney:

Emily HOUNG Ly
The Spivak Law Firm
emily@spivaklaw.com
818.205.9033

ILYM Group Contact:

Lisa Mullins
ILYM Group, Inc.
Lisa@ilymgroup.com
714.878.8836

Estimate For Administrative Solutions

KEY ASSUMPTIONS	
Total Number of Class Members	150
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	Yes
Case Duration (Years)	1

Summary of ILYM Group, Inc.'s Fees & Expenses

Case Startup:	\$325.00
Project Management:	\$2,695.00
Notification & Mailing:	\$525.00
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$2,560.00
Case Conclusion:	\$345.00

Estimated ILYM Fees & Expenses: \$6,450.00

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Vandermost v. Dywiday Systems

Tuesday, March 11, 2025

Requesting Attorney's Name: Emily Houny Ly

Activity	Rate Type	Unit Cost	Volume	Amount

CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

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

Subtotal **\$325.00**

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	1	\$70.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
ILYM Group Static Website	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$50.00	1	\$50.00
Toll Free Customer Service Representative	Flat Fee	\$75.00	1	\$75.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal **\$2,695.00**

NOTIFICATION & MAILING				
Fulfillment of Notice, English and Spanish	Per Piece	\$1.50	150	\$225.00
USPS First Class Postage	Per Piece	\$0.75	150	\$112.50
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	23	\$45.00
Storage, Photocopies, Deliveries	Flat Fee	\$142.50	1	\$142.50

Subtotal **\$525.00**

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Vandermost v. Dywiday Systems

Tuesday, March 11, 2025

Requesting Attorney's Name: Emily HOUNG LY

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$1.00	150	\$150.00
USPS First Class Postage	Per Piece	\$0.65	150	\$97.50
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	15	\$22.50
Preparation of Taxes	Hourly	\$120.00	2	\$240.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$2,560.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$345.00

Estimated ILYM Fees & Expenses: \$6,450.00

ILYM Group's Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 17

CASE NAME: VANDERMOST v DYWIDAY SYSTEMS

Requesting Paralegal: Emily Hough Ly
Plaintiff or Defense: Plaintiff
Firm Name: Spivak Law
Telephone: (818) 205-9033
Email: emily@spivaklaw.com

Date: March 11, 2025
Prepared By: Tim Phillips
 50 Corporate Park, Irvine CA 92606
 Tim@CPTGroup.com
Direct Number: (818) 415-2703
Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Class Size: 150	Undeliverable Mail Rate: 8%
Opt-Out Filing Rate: 1.5%	Payment Option: Check
No. of Checks Issued: 148	Unclaimed Funds: SCO
Language Translation Services: Yes	Postage Total: \$339.74
Settlement Website: Static Website	Grand Total: \$12,198.28
Notice Procedures: Mail	CPT'S DISCOUNTED FEE: \$8,500.00

The services and numbers reflected herein are estimates based on the information provided by counsel at the time of this Bid. If the actual services and numbers are different, our cost estimate will change accordingly. Client expressly acknowledges and agrees that estimated fees and costs may fluctuate and agrees to pay for any such increases to such estimates as if set forth herein.

The attached Terms and Conditions are included as part of and incorporated by reference to our cost proposal. By accepting our cost proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

After receiving the data, CPT will scrub all records to eliminate duplicates and anomalies; this process is designed to achieve a higher success percentage in delivering the Class Notice. Each Class Member will receive a unique mailing ID that will be utilized for all administrative purposes. If necessary, CPT will translate the court approved Notice documents and opt-out form into Spanish. The Settlement website will publish the full Notice and all relevant case documents for downloading.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
Sub Total:			\$1,945.00

DIRECT MAIL NOTIFICATION

CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible. A detailed notice and a one-page opt-out form will be mailed in English and Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
XML Lex ID Skip Trace	\$0.85	15	\$12.75
Print & Mail Notice Packets	\$1.50	150	\$225.00
First-Class Postage (up to 2 oz.)*	\$0.97	150	\$145.50
Sub Total:			\$708.25

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

According to CPT's historical data, 8% of the notices are returned as undeliverable. Upon notification from USPS, CPT performs a skip trace to locate a current address. Typically, 70% of the undeliverable notice packets are eligible for remail with an updated address.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	12	\$6.00
Skip Trace for Best Address	\$1.00	11	\$11.00
Print & Remail Notice Packets	\$1.50	8	\$12.00
First-Class Postage (up to 2 oz.)	\$0.97	8	\$7.76
Sub Total:			\$96.76

OPT-OUT PROCESSING

CPT will thoroughly examine the submissions to identify and remove any duplicates, fraudulent responses, or otherwise invalid submissions. CPT will process and verify opt-outs, objections, and other responses submitted by class members. Deficient responses will be sent a follow-up notice, offering the class member a chance to cure.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Outs	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out Processing	\$2.50	2	\$5.63
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.69	1	\$0.69
Review & Process Deficiency Responses	\$10.00	1	\$10.00
Sub Total:			\$322.82

CLASS MEMBER SUPPORT

CPT will establish a toll-free telephone number equipped with interactive voice response (IVR) capabilities and live customer support representatives. Live support will be available during regular business hours, Monday to Friday, 9:00 AM to 5:30 PM, Pacific Time (PT). The dedicated case phone number shall be operational for a maximum of 120 days following the disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	30	\$90.00
Sub Total:			\$390.00

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	148	\$14.78
Sub Total:			\$449.78

DISTRIBUTION SERVICES

CPT will establish a 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF). Upon Final Approval, CPT will perform the required settlement payment calculations, and once approved by the parties, CPT will issue a (MICR) check to all eligible claimants. CPT will also issue an IRS Form 1099 and/or IRS Form W2 when applicable. CPT utilizes the bank's Payee Positive Pay to prevent check fraud and performs monthly account reconciliations for the QSF bank account. Undeliverable checks are skip-traced to obtain a current address and are remailed accordingly. Requests for check reissues will be processed throughout the check cashing period. CPT's administration of the QSF will continue for a maximum duration of one year following the initial distribution of funds. Reminder check postcard will be sent halfway through the check cashing period.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	148	\$369.38
First-Class Postage (up to 1 oz.)	\$0.69	148	\$101.95
Project Supervisor: Account Reconciliation	\$150.00	12	\$1,800.00
Update Undeliverable Checks Database	\$0.50	7	\$3.69
Skip Trace for Best Address	\$1.00	7	\$7.39
Remail Undeliverable Checks	\$2.50	7	\$17.50
First-Class Postage (up to 1 oz.)	\$0.69	7	\$4.83
Re-Issue Checks as Required	\$5.00	6	\$30.00
First-Class Postage (up to 1 oz.)	\$0.69	6	\$4.14
Reminder Postcard	\$0.40	118	\$47.28
Postage for Postcard	\$0.56	118	\$66.19
Sub Total:			\$4,442.35

TAX REPORTING & SETTLEMENT CONCLUSION

CPT prepares annual tax reporting on behalf of the QSF and Federal and State taxes in accordance with current state and federal regulations.

All parties will be furnished with weekly and final reports. A declaration attesting to due process will be provided to all parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Sub Total:			\$3,040.00

*CPT will file Federal and California taxes in accordance with current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	31	\$4.65
Project Manager: Reporting & Remittance	\$95.00	2	\$190.00
Project Supervisor: Review of Report	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.68	1	\$8.68
Add'l Account Recons	\$150.00	3	\$450.00
Sub Total:			\$803.33

Total Administration Costs:	\$12,198.28
Courtesy Discount:	-\$3,698.28
CPT'S DISCOUNTED FLAT FEE:	\$8,500.00

TERMS AND CONDITIONS

These Terms and Conditions (“**Terms and Conditions**”) are made a part of, and incorporated by reference into, any Bid presented by CPT Group, Inc. (“**CPT**”) to Client. Each of Client and CPT is a “**Party**” to this Agreement, and collectively, the “**Parties**”.

1. Definitions.

- a) “**Affiliate**” means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) “**Agreement**” means these Terms and Conditions and the Bid.
 - c) “**Applicable Laws**” means all applicable local, state and federal laws, ordinances, rules and regulations.
 - d) “**Approved Bank**” means any financial institution that is insured by the Federal Deposit Insurance Corporation.
 - e) “**Bid**” means a proposal, statement of work, order form, and/or schedule for Services (including any and all addendums, exhibits, or amendments thereto) provided by CPT to Client.
 - f) “**Case**” means the case referred to in the attached Bid and/or the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the caption of the applicable Court Order.
 - g) “**Class**” means Members and putative Members collectively.
 - h) “**Client**” means the party or parties engaging CPT for Services as set forth in the Bid, namely Plaintiff Counsel and/or Defense Counsel.
 - i) “**Confidential Information**” means any non-public information of CPT or Client disclosed by either Party to the other Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other Party may have access, which a reasonable person would consider confidential and/or which is marked “confidential” or “proprietary” or some similar designation by the disclosing Party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient’s prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) “**Court Order**” means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more Parties To The Case to carry out a legal obligation pursuant to the Case.
 - k) “**Defendant**” means the named Party and/or Parties in the Case against whom action is brought.
 - l) “**Defense Counsel**” means the attorney(s) of record for the Defendant(s) in the Case.
 - m) “**Intellectual Property Right**” means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) “**Member**” means an individual who is eligible under the Case or Class to receive a communication about their pending legal rights under the matter and/or designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons or other parties in the representative action so designated or addressed therein.
 - o) “**Member Content**” means all Member written document communications relating to the Case, including claim forms, opt-out forms, and/or objections, which may contain Member Data.
 - p) “**Member Data**” means proprietary or personal data regarding Members under this Agreement.
 - q) “**Parties To The Case**” shall mean collectively Defendant(s) and Plaintiff(s) as defined in the Settlement Agreement or Court Order.
 - r) “**Plaintiff**” means the named party and/or parties in the Case who are bringing the action.
 - s) “**Plaintiff Counsel**” means the attorney(s) of record for Plaintiff(s) in the Case, and/or upon certification by the Court the attorney(s) of record designated to represent the Class.
 - t) “**Products**” means any and all CPT Services and work product resulting from Services.
 - u) “**Qualified Settlement Fund**” or “**QSF**” means a bank account established pursuant to U.S. Department of Treasury Regulations §1468B-1.
 - v) “**Service**” means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Members; (ii) setting up a QSF with an Approved Bank; (iii) management of disbursement of funds from the QSF to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - w) “**Settlement Agreement**” means the contract between Parties To The Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Members.
 - x) “**Settlement Amount**” means the total dollar amount agreed to between Parties To The Case to resolve the Case to mutual satisfaction.
 - y) “**Software**” means any and all of CPT’s software applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - z) “**Transmission Methods**” means the secure authorized manner to send Member Data and/or Wire Information as specified on a schedule or exhibit hereto.
 - aa) “**Term**” means the period commencing on the date set forth on the Bid and continuing until the date of final judgment (if a settlement) or upon completion of all Services as set forth in the Bid.
 - bb) “**Wire Information**” means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access and use Member Data for the purposes permitted under this Agreement and shall only transmit Member Data and/or Wire Information to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Member Data provided under this Agreement. Client further warrants that any Member Data, Wire Information, or other content, data, materials or information it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect Member Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **CPT Obligations.** CPT will (i) maintain appropriate safeguards designed to protect Member Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Member Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Parties To The Case, Members, Plaintiff Counsel or Defense Counsel as applicable.
4. **Security.** Client and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any Member Data in its possession or control under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such Member Data; (c) protect against unauthorized access to or use of such Member Data that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such Member Data in connection with its disposal.
- a) **Incident Notification.** In the event a Party discovers that Member Data relating to the Case is the subject of (i) any unauthorized acquisition, loss, access or use and/or (ii) an actual or suspected breach concerning such Party’s systems (items (i) and/or (ii) a “**Security Incident**”), or a Party has a reasonable belief that a Security Incident has occurred or is at risk of occurring, such Party will promptly but no later than forty-eight (48) hours of its discovery of such circumstances, inform the other Parties in the event of such Security Incident, and shall utilize best efforts to assist the other Parties to mitigate the effects of such Security Incident.
 - b) **Response Procedures.** In the event of a Security Incident, the breached party shall (i) cooperate with any reasonable investigation concerning the Security Incident by the other Parties, regulators and/or law enforcement; and (ii) cooperate with the other Parties to comply with Applicable Laws concerning such Security Incident, including any notification to affected individuals. The Parties acknowledge that the breached party in any Security Incident shall be the Party responsible for

any and all remedies and costs under Applicable Laws concerning such Security Incident, unless such breach occurred due to another Party's actions hereunder, in which instance such party shall be comparatively responsible for all remedies and costs. In no event will any Party serve notice or otherwise publicize a Security Incident without the prior written consent of the other Parties. The Parties shall reasonably cooperate and coordinate with each other to respond to the Security Incident, including with regard to the content of notification to affected individuals.

6. **Qualified Settlement Fund Account.** When the Case has a Settlement Amount CPT shall be authorized to establish one or more QSF bank accounts at an Approved Bank if and as applicable to the Services as set forth in the Bid. The amounts held at the Approved Bank under this Agreement are at the sole risk of Defendant. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing for Services is as stated on the Bid, and Client agrees to pay CPT in the amounts set forth on the Bid. Client will be invoiced per the schedule set forth in the Bid, and payment of fees will be due within 30 days after the date of the invoice, except where the Bid or terms of the Settlement Agreement or Court Order expressly prescribes other payment dates. All fees set forth in a Bid are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% per month (or the highest rate allowable by law, whichever is lower) on the outstanding balance from the date due until the date of actual payment, which such late charge(s) may be charged against the QSF account if incurred in connection with Services provided pursuant to administration of a settlement. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation. In connection with CPT's administration of a QSF, unless otherwise stated in the Settlement Agreement or Court Order concerning disbursement of unclaimed funds in the QSF account, CPT reserves the right, after one (1) year of issuance of disbursements to Members, to classify any remaining balance in such QSF account as additional administrative fees payable to CPT until such time as the QSF account balance becomes zero (\$0.00), and thereafter close such account.
8. **Term and Termination.**
 - a) **Term.** The Term is set forth in the Bid. The Agreement may be renewed by mutual written agreement of the parties.
 - b) **Termination for Cause.** Either Party may immediately terminate this Agreement if the other Party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching Party's receipt of written notice describing the breach in reasonable detail.
 - c) **Bankruptcy Events.** A Party may immediately terminate this Agreement if the other Party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) **Effect of Termination.** Immediately following termination of this Agreement, upon written request, Member Data may be retrieved via the secure FTP site in the same format in which the Member Data was originally inputted into the Software, at no additional charge. Alternatively, Member Data can be returned in a mutually agreed format at a scope and price to be agreed upon. CPT will maintain a copy of Member Data and Member Content for no more than four (4) years following the date of the final check cashing deadline for Members under the Settlement Agreement, after which time any Member Data and Member Content not retrieved will be destroyed.
 - e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
9. **Confidentiality.** Each Party agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such Party's rights and responsibilities under this Agreement; and (iii)

to keep the Confidential Information confidential using the same degree of care such Party uses to protect its own confidential information; provided, however, that such Party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a) **Compelled Disclosure.** If receiving Party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such Party shall (i) promptly notify the other Party, (ii) reasonably cooperate with the other Party in such Party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each Party is advised by its counsel in writing is legally required to be disclosed.
 - b) **Remedies.** If either Party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other Party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** CPT retains all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. CPT does not claim any ownership rights to Member Data.
 11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "**Covered CPT Parties**") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "**Damages**") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Member Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
 12. **Warranties.** Each Party represents and warrants to the other Party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such Party; (iii) the Agreement is a legally valid and binding obligation of such Party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE
 13. **Liability.**
 - a) **Liability Cap.** EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CLIENT AND/OR THE PARTIES TO THE CASE TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and

certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such Party's reasonable control, provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the Parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by the Parties.
- f) Assignment. Neither Party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other Party's prior written consent; provided, however, either Party, without the consent of the other Party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such Party, where the responsibilities or obligations of the other Party are not increased by such assignment and the rights and remedies available to the other Party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("**Statistical Data**") derived from the operation of the Software, and

nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such Applicable Laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other Party as set forth on the Bid or at such other address as may hereafter be furnished in writing by either Party hereto to the other Party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each Party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither Party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT may use subcontractors to perform Client-specific Services; provided however, that CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either Party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Acceptance. If, when requested in writing by Client, CPT then provides any Service to Client, whether or not such Services were specified in the original Bid, these Terms and Conditions shall apply to the provision of such Services and be deemed accepted and approved by Client concerning such Services.
- q) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 18

EXHIBIT 19

DAVID G. SPIVAK, State Bar # 179684
THE SPIVAK LAW FIRM
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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

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

Attorney for Plaintiffs,
ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

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

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

Case No.: BC430633

CLASS ACTION

Plaintiffs,

FIRST AMENDED COMPLAINT FOR:

vs.

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

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

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

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

THE
SPIVAK
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

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

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

22 **SECOND CLAIM FOR RELIEF**

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

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

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

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

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

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

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

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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

Respectfully submitted,

THE SPIVAK LAW FIRM



Date: February 23, 2010

By:

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

EXHIBIT 20

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

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

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

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

19 IT READS NOW, (READING:)

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

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

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

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

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

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

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

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLERED 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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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 41

HON. RONALD M. SOHIGIAN, JUDGE

ALINA GHRDILYAN, ET AL.,
PLAINTIFF,

VS.

RJ FINANCIAL, ET AL.,
DEFENDANTS,

CASE NO. BC430633

REPORTER'S
CERTIFICATE[illegible]

I, ANGELA Z. PARADELA, CSR NO. 9659, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 29 COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE TESTIMONY AND PROCEEDINGS HELD ON APRIL 23, 2012, IN THE ABOVE-ENTITLED MATTER.

APRIL 27, 2012

_____, CSR NO. 9659

ANGELA Z. PARADELA, OFFICIAL REPORTER

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659