

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

7 Attorneys for Plaintiff(s),
8 KEVIN LYNUM, and all others similarly situated
9 (Additional attorneys for Plaintiff(s) on following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MARIPOSA**
12 **(UNLIMITED JURISDICTION)**

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

17 *Plaintiff(s),*

18 vs.

19 PROSPECT HOTEL SERVICES, LLC, a
20 Delaware limited liability company; PROSPECT
21 HOTEL MANAGEMENT LLC, a Delaware
22 limited liability company; and DOES 1–50,
inclusive,

23 *Defendant(s).*

Case No. 23-CVCV-0012034

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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

Attorneys for Plaintiff(s),
KEVIN LYNUM, and all others similarly situated



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”). On February 9, 2024, Defendants filed an answer to Plaintiff’s First Amended Complaint. Defendants deny all of Plaintiff’s allegations and strongly contend that their wage and hour policies, practices and procedures are fully compliant with all applicable laws. A true and correct copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff’s First Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Defendants’ Answer is attached hereto as **Exhibit 5**.

7. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendants produced Plaintiff’s entire personnel file (including policies and agreements he signed and acknowledged), copies of their relevant company written policies, time-keeping records, and payroll data for Plaintiff and a random sample of putative class members specifically selected by Plaintiff’s counsel.

8. On July 08, 2024, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Henry Bongiovi, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement. During the mediation session, each side, represented by his/their respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement.

Ascertainable and Numerous Class

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

10. The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California



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Los Angeles, CA 90067

Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are approximately 284 Class Members. Plaintiff maintains that it would be impractical and economically inefficient to require each Settlement Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Settlement Class' membership is sufficiently numerous.

Predominant Common Questions

11. A question of law or fact is common to the members of a class if it may be resolved through common proof. In this case, there are many predominant common questions. Plaintiff asserts all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay wages, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to provide meal periods, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to class members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendants failed to indemnify the class for all necessary business expenditures incurred during the discharge of their duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class.

Typicality

12. Plaintiff contends that his claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that he, like absent Class Members was subject to the same



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PMB 42554
West Hollywood, CA 90069
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(213) 634-2485 Fax
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1 relevant policies and procedures governing his compensation, hours of work and meal and rest
2 periods. Because Plaintiff contends that he was subject to the same general course of conduct as
3 absent Class Members, resolving the common questions as they apply to Plaintiff will determine
4 Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could
5 potentially be subject to the same primary affirmative defenses as those of absent Class Members.
6 Accordingly, Plaintiff's claims are typical of the Class.

7 ***Adequacy***

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

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

24 ***Background of Class Counsel***

25 15. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science
26 from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from
27 Southwestern University School of Law.

28 16. In December of 1995, the Supreme Court for the State of California admitted me



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25th Fl
Los Angeles, CA 90067

1 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
2 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
3 2013, I became admitted to the New York State Bar.

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

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

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

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

21 b. *Jorge Guzman v. Department of Justice*, United States District Court,
22 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
23 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
24 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
25 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent
26 in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
27 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
28 1999.



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PMB 42554
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(213) 634-2485 Fax
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25th Fl
Los Angeles, CA 90067

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

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

15 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
16 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
17 Customs Agent, followed by an award of Attorneys' fees and costs.

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

23 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.
24 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
25 first and only case to be successfully prosecuted through trial under the Labor Code Private
26 Attorney Generals Act of 2004, Labor Code §§ 2698, et seq. on behalf of plaintiffs and other
27 aggrieved employees against someone other than an employer for civil penalties including unpaid
28 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid



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PMB 42554
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Office:
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25th Fl
Los Angeles, CA 90067

1 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
2 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

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

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

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

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

19 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
20 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
21 court on behalf of nonexempt employees).

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

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

28 e. *DiCato v. Francesca's Collections, Inc.*, San Diego County Superior



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(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class Counsel and granted final
2 approval of class action settlement on behalf of boutique manager and assistant manager
3 employees).

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

7 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
8 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
9 action settlement on behalf of medical devices employees).

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

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

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

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

22 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
23 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
24 on behalf of dairy and agricultural laborers).

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



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PMB 42554
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(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 final approval of class action settlement by the court on behalf of hourly employees).

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

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

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

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

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

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

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

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



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(213) 725-9094 Tel
(213) 634-2485 Fax
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1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 manager employees).

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

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

8 ***Class Action Treatment Is Superior***

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

18 ***The Settlement is Presumptively Fair***

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



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West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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1801 Century Park East
25th Fl
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litigation, and a fair result for the Class Members.

Exposure & Risk Analysis

25. My office prepared “damages” estimates in advance of the mediation. Attached as **Exhibit 6** are true and correct copies of the damages spreadsheets my office prepared. In advance of the mediation, Plaintiff determined Defendants’ maximum exposure for restitution and penalties to be approximately \$6,207,499.43 (consisting of \$672,683.59 in unpaid wages, \$920,170.97 in missed meal period premium wages, \$1,101,040.06 in missed rest break premium wages, \$117,834.75 in unreimbursed business expenses, \$293,050.00 for wage statement penalties, \$825,509.25 for waiting time penalties, and \$1,650,000.00 for civil penalties). Plaintiff calculated the damages based on the number of workweeks and pay periods provided by Defendants, Plaintiff’s reports, and the sample data. Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. Plaintiff also considered the fact that Defendants could gather declarations from Defendants’ current employees regarding Plaintiff’s claims, that were favorable to Defendants with respect to the relevant factual issues at issue in Plaintiff’s action. Plaintiff’s Counsel applied discounts to the maximum 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 the Court could deny class certification and that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendants would likely by trial have gathered releases from the majority of the Class Members. A settlement for approximately 6.91% of the potential recovery is reasonable. 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 \$429,000.00 is fair and reasonable.

26. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff’s recovery for unpaid wages would be extremely limited at best, largely because Defendants’ policies throughout the relevant time period required the employees to records all hours worked and prohibited off-the-clock work. Off-the-clock claims are difficult where a defendant requires



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1 in its written policies that all work must take place while clocked in. *See Jong v. Kaiser*
2 *Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock
3 work for it to be compensable). *Id.* In their written employment policies, Defendants mandate
4 that employees must record all time worked accurately on their time records. Moreover, while
5 Defendants dispute that off-the-clock work occurred, they contend that any time spent off the
6 clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5
7 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de*
8 *minimis* defense even if compensable. (Stating that “We do not decide whether there are
9 circumstances where compensable time is so minute or irregular that it is unreasonable to expect
10 the time to be recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine
11 may apply here because the time spent off the clock were minute and insignificant. Accordingly,
12 a large award of penalties seems unlikely with respect to this claim.

13 27. The difficulty inherent in proving that off-the-clock work occurred poses a
14 significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove
15 this claim. Generally, a court will not certify a class unless it can determine an appropriate
16 classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here,
17 Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially
18 given the lack of records indicating when such off-the-clock work may have taken place.
19 Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine
20 if an individual in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there
21 is a significant risk that the Court would consider this evidentiary showing insufficient as a
22 classwide methodology. Further, regarding the rounding claim, the court could fine the rounding
23 policy to be legal.

24 28. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s
25 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a
26 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
27 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
28 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is



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1 performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
2 or prohibited the employee from taking a proper break, or otherwise failed to release the
3 employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the
4 reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s*
5 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

6 29. Defendants contend they did not impede or discourage Plaintiff, or any other
7 employees, from taking their meal or rest periods. Defendants’ policies mandate that employees
8 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
9 of their meal breaks each day on their time records. The time records that comprise the random
10 sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were
11 taken. Of the time records that show a late, short or no lunch, individualized evidence may be
12 necessary to determine whether they occurred due to conduct of the Defendants or each of the
13 employees concerned. Accordingly, there is a significant risk that the value of Plaintiff’s meal
14 period claim would be substantially reduced at trial.

15 30. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff’s rest
16 period claim. Employers are not required to record rest periods and such periods are paid.
17 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
18 accordance with California law. Further, Defendants’ written policies on meal and rest periods
19 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
20 showing whether an employee clocked out or not, there is no such evidence to prove a missed
21 rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims
22 at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and
23 surveys to prove the claims. While a victory with such evidence is certainly possible, relevant
24 caselaw makes such claims risky from a trial management and due process perspective. *See*
25 *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common
26 questions exist to support class certification, it may be possible to manage individual issues
27 through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015)
28 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.



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

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

1 31. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
2 Court may consider Plaintiff's claims as to Defendants' alleged failure to indemnify for business
3 expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that
4 Defendants required Plaintiff and the Class Members to use their personal items including
5 cellular phones and failed to indemnify them for these business expenses. *Id.* Defendants argued
6 that they have supplied their employees with radios and cellphones and had an expense
7 reimbursement policy. As such, there is a risk that the Court may consider Plaintiff's claims to
8 be individual in nature and unfit for class wide resolution.

9 32. **Risks Associated with the Statutory "Wage Statement" Penalty Claims.**
10 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA
11 penalties. Under Labor Code section 226, wage statements must include various information,
12 including the applicable rates of pay, corresponding hours worked, and gross pay. Here,
13 Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is
14 derivative of them. On their face, the wage statements issued by Defendants comply with the
15 requirements of Labor Code section 226.

16 33. **Risks Associated with The Waiting Time Penalties Claim.** Plaintiff's claim for
17 untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor
18 Code sec. 226, Plaintiff must establish that the late payments were willful. The evidence of good
19 faith Defendants put forth will defeat this claim.

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

27 35. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
28 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's



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(213) 634-2485 Fax
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Office:
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counsel estimated a maximum exposure of approximately \$1,650,000.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. *Id.* Plaintiff’s counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. Although two federal district court decisions held that “stacking” PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff’s counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking.

36. I am aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.¹ PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.² For instance, on October 24, 2017, the

¹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil 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,

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

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

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

² In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and



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PMB 42554
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(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

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

37. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 284 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

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

correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 7**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 8**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.



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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

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

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

6 39. The settlement of PAGA penalties in the sum of \$5,000.00, of which 75%
7 (\$3,750.00) will be paid to the LWDA and 25% (\$1,250.00) will be distributed to the Class, is
8 reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount
9 for PAGA penalties to be paid to the LWDA and to the Class. The portion to be paid to the
10 LWDA was not the result of self-interest at the expense of other Class Members.

11 ***Attorneys' Fees and Costs***

12 40. I intend to request Class Counsel Attorneys' Fees of \$143,000.00 (one-third of
13 the GSA) and up to \$15,000.00 for actual Class Counsel's litigation costs incurred in prosecuting
14 this Action, which I currently estimate to be approximately \$8,255.23 and will be no more than
15 \$15,000.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks
16 in pursuing this case these amounts are well within the range of reasonableness and thus warrant
17 this Court's preliminary approval. In addition, based on my experience in wage and hour class
18 action matters, fee awards of approximately one-third of the settlement fund are routinely
19 approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third
20 of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace*
21 *Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund);
22 *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-
23 CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case
24 No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles
25 County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network*
26 *Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of
27 fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No.
28 BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct.,



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1801 Century Park East
25th Fl
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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).

41. 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

1 case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel
2 achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class
3 Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained
4 information from putative class members, met and conferred with Defendants' counsel on
5 numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided
6 by Defendants and obtained through other sources, researched applicable law, and estimates of
7 "damages" for purposes of settlement discussions, among other tasks.

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

13 *Class Representative Service Payment*

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

27 *Individual Class Payment*

28 44. The Individual Class Payment will be paid to each Class Member based on his or



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(213) 634-2485 Fax
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her eligible Work Weeks compared to the total Work Weeks. Settlement § 1.23. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

Notice By First Class U.S. Mail Only (No Email)

45. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, § 8. Although there are current employee Class Members, it is uncertain whether Defendants' records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as Exhibits 1 and 2 to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how to dispute number of work weeks and how the disputes will be resolved; and (9) the estimated Individual Settlement Payment for each Class Member. Additionally, the Notice will include the number of Eligible Workweeks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As such, the parties' proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

Settlement Administration Duties

46. The duties of the Settlement Administrator are spelled out in section III(C) of the Settlement and in the bid provided by Phoenix Class Action Administration Solutions a true and correct copy of which is attached hereto as **Exhibit 9**.



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PMB 42554
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(213) 634-2485 Fax
SpivakLaw.com

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

1 **Settlement Administration Costs**

2 47. With regard to the settlement administration costs provision, it is reasonable.
3 Before agreeing to Phoenix Class Action Administration Solutions, the Parties sought and
4 reviewed bids from other reputable third-party administrators: (A) Simpluris = \$9,000.00; (B)
5 Xpand = \$8,500.00; and C) CPT Group, Inc. = \$10,000.00. A true and correct copy of the bid
6 from Simpluris is attached hereto as **Exhibit 10**. A true and correct copy of the bid from Xpand
7 is attached hereto as **Exhibit 11**. A true and correct copy of the bid from CPT Group, Inc. is
8 attached hereto as **Exhibit 12**. The bid provided by Phoenix Class Action Administration
9 Solutions was the lowest. Thus, settlement administration costs provision should be given
10 preliminary approval.

11 **Notice of Settlement to the LWDA**

12 48. Pursuant to Labor Code § 2699(l)(2), Plaintiff submitted a copy of the Settlement
13 with the Labor and Workforce Development Agency (“LWDA”) at the same time Plaintiff’s
14 Motion is being filed with the Court. A true and correct copy of Plaintiff’s submission with the
15 LWDA and a confirmation email is attached hereto as **Exhibit 13**.

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

18 Executed on Friday, November 22, 2024 at New York, New York.

19 

20 DAVID SPIVAK,
21 Declarant



22 SPIVAK LAW
23 EMPLOYEE RIGHTS

24 Mail:
25 8605 Santa Monica Bl
26 PMB 42554
27 West Hollywood, CA 90069
28 (213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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

EXHIBIT 1

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

7 Attorneys for Plaintiff(s),
8 KEVIN LYNUM, 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 MARIPOSA**
12 **(UNLIMITED JURISDICTION)**

13 KEVIN LYNUM, on behalf of himself and all
14 others similarly situated, and as an “aggrieved
15 employee” on behalf of other “aggrieved
Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.
18

19 PROSPECT HOTEL SERVICES, LLC, a
20 Delaware limited liability company; PROSPECT
HOTEL MANAGEMENT LLC, a Delaware
21 limited liability company; and DOES 1–50,
inclusive,

22 *Defendant(s).*
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Case No. 23-CVCV-0012034

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

Action filed: September 25, 2023
Dept: Dept. 03, The Honorable
Anita Bryant

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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

Attorneys for Plaintiff(s),
KEVIN LYNUM, and all others similarly situated

ATTORNEYS FOR DEFENDANT(S)

NICOLE SHETH (SBN 253515)
nsheth@kbrlaw.com
CHRISTINA RICCI (SBN 346042)
cricci@kbrlaw.com
KAUFMAN BORGEEST & RYAN
21700 Oxnard Street, Suite 1450
Woodland Hills, CA 91367
Telephone: (818) 990-0992
Facsimile: (818) 880-0993

ROBERT B. FOROUZANDEH (SBN 247177)
rforouzandeh@rppmh.com
REICKER, PFAU, PYLE & MCROY, LLP
1421 State Street
Suite B
Santa Barbara, CA 93101
Telephone: (805) 966-2440
Facsimile: (805) 966-3320

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Kevin Lynam (“Plaintiff”) and defendants PROSPECT HOTEL SERVICES,
3 LLC and PROSPECT HOTEL MANAGEMENT, LLC (collectively “Defendants”), following a
4 full day mediation session on July 8, 2024 with Henry Bongiovi, Esq. and is subject to the
5 approval of the Court pursuant to the California Rules of Court. The Agreement refers to Plaintiff
6 and Defendants collectively as “Parties,” or individually as “Party” and shall be effectuated upon
and subject to the following terms and conditions.

7 The Parties agree that the Action shall be, and is, ended, settled, resolved, and concluded
8 by agreement of Defendants to pay the settlement amount of Four Hundred and Twenty Nine
9 Thousand Dollars and Zero Cents (\$429,000), as provided in Section 1.22 below (“Gross
10 Settlement Amount”) pursuant to the terms and conditions of this Settlement and for the
11 consideration set forth herein, including but not limited to, a full, final, and forever release of all
claims by Plaintiff, Class, and Aggrieved Employees as set forth herein.

12 **1. DEFINITIONS.**

13 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
14 PROSPECT HOTEL SERVICES, LLC and PROSPECT HOTEL MANAGEMENT, LLC
15 captioned “Kevin Lynam, on behalf of himself, and all others similarly situated, and as an
16 ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the Labor Code Private
17 Attorneys General Act of 2004, *Plaintiff(s)*, vs. defendants PROSPECT HOTEL SERVICES,
18 LLC and PROSPECT HOTEL MANAGEMENT, LLC, and DOES 1 through 50, inclusive,
19 *Defendant(s)*,” Case No. 23-CVCV-0012034 initiated on September 25, 2023 and pending in
Superior Court of the State of California, County of Mariposa.

20 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the
21 neutral entity the Parties have agreed to appoint to administer the Settlement and who will be
22 responsible for the administration of Individual Settlement Payments to be made by Defendants
23 from the Gross Settlement Amount and related matters under this Settlement. The Parties each
24 represent that they do not have any financial interest in the Administrator or otherwise have a
relationship with the Administrator that could create a conflict of interest

25 1.3. “Administration Expenses Payment” means the amount the Administrator will be
26 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
27 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection

1 with Preliminary Approval of the Settlement, as defined in Section 3.2.3.

2 1.4. “Aggrieved Employee” means a person currently or formerly employed by
3 Defendants in California and classified as an hourly, non-exempt employee who worked for
4 Defendants at any time during the PAGA Period. The Aggrieved Employees do not include the
5 hourly, non-exempt employees who worked at Defendant Prospect Hotel Management, LLC’s
6 corporate headquarters.

7 1.5. “Class” means all persons currently or formerly employed by Defendants in
8 California and classified as hourly, non-exempt employees who worked for Defendants at any time
9 during the Class Period. The Class does not include the hourly, non-exempt employees who
10 worked at Defendant Prospect Hotel Management, LLC’s corporate headquarters.

11 1.6. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm and Walter
12 L. Haines of United Employees Law Group.

13 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
14 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
15 expenses, respectively, incurred to prosecute the Action, as defined in Section 3.2.1.

16 1.8. “Class Data” means Class Member identifying information in Defendants’
17 possession including the Class Member’s name, last-known mailing address, Social Security
18 number, or as applicable, other taxpayer identification number and number of Class Period Work
19 Weeks and PAGA Pay Periods.

20 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as
21 either a Participating Class Member or Non-Participating Class Member (including a Non-
22 Participating Class Member who qualifies as an Aggrieved Employee).

23 1.10. “Class Member Address Search” means the Administrator’s investigation and
24 search for current Class Member mailing addresses using all reasonably available sources,
25 methods and means including, but not limited to, the National Change of Address database, skip
26 traces, and direct contact by the Administrator with Class Members.

27 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
28 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
Class Members in English with a Spanish translation in the form, without material variation,
attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from September 25, 2019 to the date of

1 preliminary approval of the settlement.

2 1.13. "Class Representative" means the named Plaintiff in the operative complaint in the
3 Action seeking Court approval to serve as a Class Representative.

4 1.14. "Class Representative Service Payment" means the payment to the Class
5 Representative from the Gross Settlement Amount, subject to Court approval, in exchange for her
6 general release and in recognition of Plaintiff's efforts initiating the Action and providing services
in support of the Action.

7 1.15. "Court" means the Superior Court of California, County of Mariposa.

8 1.16. "Defendants" means named Defendants PROSPECT HOTEL SERVICES, LLC
9 and PROSPECT HOTEL MANAGEMENT, LLC.

10 1.17. "Defense Counsel" means Robert B. Forouzandeh of Reicker, Pfau, Pyle &
11 McRoy, LLP and Christina Ricci and Nicole Sheth of Kaufman Borgeest & Ryan LLP.

12 1.18. "Effective Date" means the later of the following: (1) the date the Final Approval
13 is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and
14 no appeal is taken of the Final Approval Order, sixty (60) days after the Final Approval is signed;
15 or (3) if an appeal is taken from the Court's overruling of objections to the Settlement, ten (10)
16 days after the appeal is withdrawn or after an appellate decision affirming the final approval
decision becomes final.

17 1.19. "Final Approval" means final formal court order signed by the Court and entering
18 a judgment approving this Settlement on substantially the terms provided herein or as the same
19 may be modified by subsequent written agreement of the Parties as approved by the Court
following the Final Approval Hearing in accordance with the terms herein.

20 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final
21 Approval of the Settlement.

22 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final
23 Approval of the Settlement.

24 1.22. "Gross Settlement Amount" means \$429,000 which is the total amount Defendants
25 agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement
26 Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA
27 PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class
Representative Service Payment and the Administration Expenses Payment.

1 1.23. "Individual Class Payment" means the Participating Class Member's pro rata
2 share of the Net Settlement Amount, less the employee's portion of required federal and state
3 withholdings, calculated according to the number of Work Weeks worked by the Participating
4 Class Member during the Class Period.

5 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
6 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods the
7 Aggrieved Employee worked during the PAGA Period.

8 1.25. "Judgment" means the judgment entered by the Court based upon the Final
9 Approval.

10 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
11 agency entitled, under Labor Code section 2699, subd. (i).

12 1.27. "LWDA PAGA Payment" means the 75% share of the total amount allocated
13 toward PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

14 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
15 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
16 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
17 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
18 paid to Participating Class Members as Individual Class Payments.

19 1.29. "Non-Participating Class Member" means any Class Member who opts out of the
20 Settlement by sending the Administrator a valid and timely Request for Exclusion.

21 1.30. "Notice Packet" means the Class Notice (Exhibit A), the Election Not to
22 Participate in Settlement form (Exhibit B), the Work Week Dispute form (Exhibit C), and the
23 Objection form (Exhibit D) in English with Spanish translations.

24 1.31. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
25 worked for Defendants for at least one day during the PAGA Period.

26 1.32. "PAGA Period" means the period from September 25, 2022 to the date of
27 preliminary approval of this Settlement.

28 1.33. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.34. "PAGA Notice" means Plaintiff's September 25, 2023 letter to Defendants and
the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.35. "PAGA Penalties" means the total amount of \$5,000 PAGA civil penalties to be

1 paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,250) and
2 the 75% to LWDA (\$3,750) in settlement of PAGA claims, subject to Court approval.

3 1.36. "Participating Class Member" means a Class Member who does not submit a valid
4 and timely Request for Exclusion from the Settlement.

5 1.37. "Plaintiff" means Kevin Lylum, the named plaintiff in the Action.

6 1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
of the Settlement.

7 1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary
8 Approval and Approval of PAGA Settlement.

9 1.40. "Released Class Claims" means the claims being released as described in
10 Paragraph 6.2 below.

11 1.41. "Released PAGA Claims" means the claims being released as described in
Paragraph 6.2 below.

12 1.42. "Released Parties" means: Defendants and each of their former, present and future
13 parents, affiliated or related entities, fictitious business names, franchisors, boards, directors,
14 officers, shareholders, owners, members, trustees, heirs, administrators, attorneys, insurers,
15 predecessors, successors, assigns, subsidiaries, representatives, agents, payroll processors,
16 independent contractors, managers, employees and affiliates.

17 1.43. "Request for Exclusion" means a Class Member's submission of a written request
18 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.

19 1.44. "Response Deadline" means 60 days after the Administrator mails Notice to Class
20 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)
21 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
22 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
23 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
the Response Deadline has expired.

24 1.45. "Settlement" means the disposition of the Action effected by this Agreement and
25 the Judgment.

26 1.46. "Work Week" means any week during which a Class Member worked for
27 Defendants for at least one day, during the Class Period excluding the workweeks the Class

Member worked at Defendant Prospect Hotel Management, LLC's corporate headquarters.

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

2. RECITALS.

2.1. On September 25, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for failure to pay wages, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to properly pay vacation time, failure to provide meal periods, and related claims. On December 4, 2023, Plaintiff filed a First Amended Complaint adding a PAGA cause of action. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny 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 Defendants and the LWDA by sending the PAGA Notice.

2.3. On July 08, 2024, the Parties participated in an all-day mediation presided over by Mr. Henry Bongiovi, Esq. which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, written policies, sample payroll records, sample time records, the number of comparable employees, the number of workweeks, the number of pay periods, 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 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay \$429,000 as the Gross Settlement Amount. In no event will Defendants be required to pay more than the Gross Settlement Amount, except to separately pay

any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$15,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$143,000 and a Class Counsel Litigation Expenses Payment of not more than \$15,000. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more

1 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
2 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
3 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
4 division or sharing of any of these Payments.

5 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
6 \$10,000 except for a showing of good cause and as approved by the Court. To the extent the
7 Administration Expenses are less or the Court approves payment less than \$10,000, the
8 Administrator will retain the remainder in the Net Settlement Amount.

9 3.2.4. To Each Participating Class Member: The Settlement Administrator will
10 calculate the total number of Work Weeks for all Participating Class Members who worked during
11 the Class Period. An Individual Class Payment is calculated by (a) dividing the Net Settlement
12 Amount by the total number of Work Weeks worked by all Participating Class Members during
13 the Class Period and (b) multiplying the result by each Participating Class Member's Work
14 Weeks. The Settlement Administrator will determine the total number of Work Weeks worked
15 during the Class Period for each Participating Class Member.

16 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each
17 Participating Class Member's Individual Class Payment will be allocated to settlement of wage
18 claims (the "Wage Portion"). The Wage Portions are subject to tax withholdings customarily
19 made from an employee's wages and all other authorized and required withholdings and will be
20 reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class
21 Payment will be allocated to settlement of claims for statutory damages, reimbursements, interest
22 and penalties (the "Non-Wage Portion"). The Non-Wage Portions shall be subject to all
23 authorized and required withholdings other than the tax withholdings customarily made from
24 employees' wages and shall be reported on IRS 1099 Forms. Participating Class Members
25 assume full responsibility and liability for any employee taxes owed on their Individual Class
26 Payment. Defendants shall not make as part of this Settlement, nor be required to make, any
27 deductions, nor pay any monthly contributions for any insurance, retirement, 401(k) or profit-
28 sharing plans, or any benefit plans related to monies paid as a result of this Settlement.

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 \$5,000 to be paid from the Gross Settlement Amount, with 75% (\$3,750) allocated to
4 the LWDA PAGA Payment and 25% (\$1,250) allocated to the Individual PAGA Payments.

5 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
6 for all Aggrieved Employees worked during the PAGA Period by (a) dividing the amount of the
7 Aggrieved Employees' 25% share of PAGA Penalties \$1,250 by the total number of PAGA Pay
8 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the
9 result by each Aggrieved Employee's PAGA Pay Periods. The Settlement Administrator will
10 determine the total number of Pay Periods worked during the PAGA Period for each Aggrieved
11 Employee. Aggrieved Employees assume full responsibility and liability for any taxes owed on
12 their Individual PAGA Payment.

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

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

17 4.1. Class Work Weeks and Aggrieved Employee PAGA Pay Periods. Based on a
18 review their records to date, Defendants estimate there are 284 Class Members who collectively
19 worked a total of 14,283 Work Weeks, and 139 Aggrieved Employees who worked a total of 3,000
20 of PAGA Pay Periods.

21 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
22 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in
23 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
24 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
25 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
26 employees who need access to the Class Data to effect and perform under this Agreement. The
27 Class Data shall not be disclosed to Plaintiff, Class Counsel or any other person without prior
28 approval from Defendants' counsel. However, for purposes of determining whether the escalation
provision of Section 9 of this Settlement is triggered, the Administrator will disclose to Class
Counsel the number of Class Members, Aggrieved Employees, Work Weeks, and PAGA Pay

1 Periods before notifying the Class of the Settlement. Defendants have a continuing duty to
2 immediately notify Class Counsel if they discover that the Class Data omitted class member
3 identifying information and to provide corrected or updated Class Data as soon as reasonably
4 feasible. Without any extension of the deadline by which Defendants must send the Class Data to
5 the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith,
to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

6 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
7 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
8 taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

9 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants
10 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
11 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
12 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
13 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
14 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
15 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
Payments.

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

28 4.4.2. The Administrator must conduct a Class Member Address Search for all
other Class Members whose checks are returned undelivered without USPS forwarding address.

1 Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the
2 USPS forwarding address provided or to an address ascertained through the Class Member
3 Address Search. The Administrator need not take further steps to deliver checks to Class Members
4 whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a
5 replacement check to any Class Member whose original check was lost or misplaced, requested
by the Class Member prior to the void date.

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

11 4.4.4. The payment of Individual Class Payments and Individual PAGA
12 Payments shall not obligate Defendants to confer any additional benefits or make any additional
13 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
this Agreement.

14 **5. [OMITTED]**

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

18 6.1.1 Plaintiff's Release. Plaintiff and his respective former and present
19 spouses, representatives, agents, attorneys, heirs, administrators, predecessors, successors, and
20 assigns generally, forever release and discharge Released Parties from any and all claims,
21 transactions, debts, liabilities, demands, actions, causes of action or occurrences of every nature
22 and description that accrued during the Class Period, under state law and the Wage Orders of the
23 California Industrial Welfare Commission, that were alleged or which could have been alleged
24 based on the factual allegations in the First Amended Complaint in the Action, including, but not
25 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
26 contained, in the Operative Complaint, (b) all PAGA claims that were, or reasonably could have
27 been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or
ascertained during the Action and released under 6.2, below and (c) all claims arising under

1 California Labor Code Sections 201-204, 206, 218.6, 226, 226.7, 510, 512, 1182.12, 1194,
2 1194.2, 1197, 1198, 2800, 2802, and/or those arising under the Industrial Welfare Commission
3 Wage Orders, California Business and Professions Code section 17200 et seq., California Code
4 of Regulations, title 8, Section 11160, California Civil Code sections 3287, 3289, and 3294, and
5 California Code of Civil Procedure section 1021.5. ("Plaintiff's Release.") Plaintiff's Release
6 does not extend to any claims or actions to enforce this Agreement, or to any claims for vested
7 benefits, unemployment benefits, disability benefits, social security benefits, workers'
8 compensation benefits that arose at any time, or based on occurrences outside the Class Period.
9 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
10 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
11 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or
12 additional facts or Plaintiff's discovery of them. The above release language shall also be included
13 in the Class Notice.

12 6.1.2 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
13 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
14 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

19
20 Thus, subject to and in accordance with this Agreement, even if Plaintiff
21 may hereafter discover facts in addition to or different from those she now knows or believes to
22 be true, Plaintiff, upon the Effective Date, shall be deemed to have fully, finally, and forever
23 settled and released any and all claims against the Released Parties that were alleged or could
24 have been alleged in the Action, as well as any other claims, whether known or unknown,
25 suspected or unsuspected, contingent or non-contingent, that now exist, upon any theory of law
26 or equity, including without limitation, conduct which is negligent, intentional, with or without
27 malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or
28 existence of such different or additional facts.

1 6.2 Release by Participating Class Members: All Participating Class Members, on
2 behalf of themselves and their respective former and present representatives, agents, attorneys,
3 heirs, administrators, successors, and assigns, release Released Parties from (i) all claims
4 transactions, debts, liabilities, demands, actions, causes of action or occurrences of every nature
5 and description that accrued during the Class Period, under state law and the Wage Orders of the
6 California Industrial Welfare Commission, that were alleged or which could have been alleged
7 based on the factual allegations in the First Amended Complaint in the Action, including, but not
8 limited to: failure to pay wages, failure to authorize and permit rest periods, failure to indemnify
9 for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure
10 to properly pay vacation time, failure to provide meal periods, and related allegations for the Class
11 Period. This shall include all claims arising from the factual allegations in the First Amended
12 Complaint in the Action that can support violations of California Labor Code Sections 201-204,
13 206, 218.6, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and/or those
14 arising under the Industrial Welfare Commission Wage Orders, California Business and
15 Professions Code section 17200 et seq., California Code of Regulations, title 8, Section 11160,
16 California Civil Code sections 3287, 3289, and 3294, and California Code of Civil Procedure
17 section 1021.5. Except as set forth in Section 6.3 of this Agreement, Participating Class Members
18 do not release any other claims, including claims for vested benefits, wrongful termination,
19 violation of the Fair Employment and Housing Act, unemployment insurance, disability, social
20 security, workers' compensation, or claims based on facts occurring outside the Class Period. The
21 above release language shall also be included in the Class Notice.

22 6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:
23 All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
24 behalf of themselves and their respective former and present representatives, agents, attorneys,
25 heirs, administrators, successors, and assigns, the Released Parties from any and all claims, debts,
26 liabilities, demands, actions, or causes of action of every nature and description that accrued
27 during the PAGA Period, under state law and the California Labor Code, that were alleged or
28 which could have been alleged based on the exhausted claims and factual allegations in Plaintiff's
29 notices sent to the LWDA and alleged in the operative complaint, regardless of whether the
30 Aggrieved Employees opt-out of the Settlement Agreement, including claims for civil penalties
31 based on unpaid wages, including but not limited to failure to pay minimum wages, straight time

1 compensation, overtime compensation, double time compensation and interest; failure to timely
2 pay regular and final wages; failure to reimburse business expenses; failure to properly pay
3 vacation time; missed meal period and rest period wages and premiums; meal period waivers and
4 on-duty meal period waivers; payment for all hours worked; wage statements and paystubs,
5 including wage statements and paystubs furnished or available in physical, electronic, or other
6 forms; failure to keep accurate records; penalties, including recordkeeping penalties, wage
7 statement penalties, minimum-wage penalties, and waiting-time penalties; statutory penalties and
8 civil penalties; and attorneys' fees and costs. This shall include all claims arising from the factual
9 allegations in the First Amended Complaint in the Action that can support recovery of civil
10 penalties for violations of California Labor Code Sections 201, 202, 203, 204, 206, 210, 226,
11 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2698 et seq.,
12 2800, and 2802, and/or those arising under the Industrial Welfare Commission Wage Orders;
13 PAGA; and/or those arising under the Industrial Welfare Commission Wage Orders; California
14 Code of Regulations, title 8, Section 11160; and California Code of Civil Procedure section
15 1021.5 ("PAGA Released Claims"). The above release language shall also be included in the
16 Class Notice.

17
18 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
19 file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with
20 the Court's current checklist for Preliminary Approvals.

21 **7.1 Defendants' Declaration in Support of Preliminary Approval.** Within ten (10)
22 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel
23 a signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any
24 actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their
25 Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other
26 pending matter or action asserting claims that will be extinguished or adversely affected by the
27 Settlement.

28 **7.2 Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel
all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under

1 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
2 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
3 from the Administrator attaching its “not to exceed” bid for administering the Settlement and
4 attesting to its willingness to serve; competency; operative procedures for protecting the security
5 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
6 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
7 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
8 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
9 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
10 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
11 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
12 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
13 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
14 subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to
15 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
16 potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient.
17 In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware
18 of any other pending matter or action asserting claims that will be extinguished or adversely
19 affected by the Settlement.

20 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
21 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
22 than 60 days after the full execution of this Agreement; obtaining a prompt hearing date for the
23 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
24 for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary
25 Approval to the Administrator.

26 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
27 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
28 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 calculating payroll tax withholdings and providing reports 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 three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Work Weeks, and PAGA Pay Periods in the Class Data.

8.4.2 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 and translation, of the forms attached to this Agreement 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 Work Weeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than three (3) business days after the Administrator's receipt of

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

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

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

20 8.5 Requests for Exclusion (Opt-Outs).

21 8.5.1 Plaintiff may not request exclusion from the Class. Class Members who
22 wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax,
23 email, or mail, a signed written Request for Exclusion not later than 60 days after the
24 Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose
25 Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her
26 representative that reasonably communicates the Class Member's election to be excluded from
27 the Settlement and includes the Class Member's name, address and email address or telephone
28 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. The date of the initial mailing of the Notice
Packet, and the date the signed request for exclusion was postmarked, shall be conclusively

1 determined according to the records of the Settlement Administrator. The Settlement
2 Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel
3 and Defense Counsel and shall report the number of Requests for Exclusion that it receives, to
4 the Court, in its declaration to be provided in advance of the Final Approval Hearing.

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

14 8.5.3 Every Class Member who does not submit a timely and valid Request for
15 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
16 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
17 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the
18 Participating Class Member actually receives the Notice Packet or objects to the Settlement. A
19 Class Member cannot submit both a Request for Exclusion and an Objection. If a Class Member
20 subjects both an Objection and Request for Exclusion, the Request for Exclusion will control and
21 the Objection will be void.

22 8.5.4 Every Class Member who submits a valid and timely Request for
23 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
24 or have the right to object to the class action components of the Settlement. Because future PAGA
25 claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class
26 Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph
27 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

28 8.6 Challenges to Calculation of Work Weeks. Each Class Member shall have 60
days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and/or
PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known

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

11 8.7 Objections to Settlement.

12 8.7.1 The Plaintiff may not object to the Settlement. Only Participating Class
13 Members may object to the class action components of the Settlement and/or this Agreement,
14 including contesting the fairness of the Settlement, and/or amounts requested for the Class
15 Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative
16 Service Payment.

17 8.7.2 Participating Class Members may send written objections, signed by the
18 Objecting Class Member or his or her attorney, along with supporting papers, to the
19 Administrator, by fax, email, or mail. All written objections must contain the Class Member's
20 address, telephone number, and reference to the Action. In the alternative, Participating Class
21 Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections
22 at the Final Approval Hearing. A Participating Class Member who elects to send a written
23 objection to the Administrator must do so not later than 60 days after the Administrator's mailing
24 of the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet was re-
25 mailed). The Objection form attached as Exhibit D may be used for this purpose but is not
26 required. The date of the initial mailing of the Notice Packet, and the date the signed objection
27 was postmarked, shall be conclusively determined according to the records of the Settlement
28 Administrator. The Settlement Administrator shall send any objections it receives to Defense
Counsel and Class Counsel within five (5) business days of receipt. The Court retains final

1 authority with respect to consideration and admissibility of any Class Member objections. If a
2 Class Member objects to the Settlement, the Class Member will remain a member of the Class
3 and if the Court approves this Agreement, the Class Member will be bound by the terms of the
4 Settlement in the same way and to the same extent as a Class Member who does not object.

5 8.7.3 Non-Participating Class Members have no right to object to any of the class
6 action components of the Settlement.

7 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
8 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

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

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

25 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
26 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
27 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
28 Exclusion (whether valid or invalid) received, objections received, challenges to Work Weeks
and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class
Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include
provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies

1 of all Requests for Exclusion and objections received.

2 8.8.4 Work Weeks and/or PAGA Pay Periods Challenges. The Administrator
3 has the authority to address and make final decisions consistent with the terms of this Agreement
4 on all Class Member challenges over the calculation of Work Weeks and/or PAGA Pay Periods.
5 The Administrator's decision shall be final and not appealable or otherwise susceptible to
6 challenge.

7 8.8.5 Administrator's Declaration. Not later than 14 days before the date by
8 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
9 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
10 for filing in Court attesting to its due diligence and compliance with all of its obligations under
11 this Agreement, including, but not limited to, its mailing of Notice Packet, the Notice Packets
12 returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the
13 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
14 number of written objections and attach the Exclusion List. The Administrator will supplement
15 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
16 for filing the Administrator's declaration(s) in Court.

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

25 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on their records,
26 Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 284 Class
27 Members who worked a total of 14,283 Work Weeks during the Class period and (2) there are
28 139 Aggrieved Employees who worked a total of 3,000 PAGA Pay Periods during the PAGA
Period. If the Work Weeks and/or Class Members as of the date the Court approves the settlement
exceeds the referenced 14,283 Work Weeks and/or 284 Class Members by more than 10%, the

1 Gross Settlement Amount, including the Class Counsel Fees Payment, the Class Representative
2 Payment, and the LWDA payment, will increase proportionally according to the number of
3 additional Work Weeks or Class Members, whichever results in a higher increase in the Gross
4 Settlement Amount.

5 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
6 Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members,
7 Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties
8 agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect
9 whatsoever, and that neither Party will have any further obligation to perform under this
10 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
11 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the
12 Court of their election to withdraw not later than fourteen (14) days after the Administrator sends
13 the final Exclusion List to Defense Counsel; late elections will have no effect.

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

22 11.1 Response to Objections. Each Party retains the right to respond to any objection
23 raised by a Participating Class Member, including the right to file responsive documents in Court
24 no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
25 accepted by the Court.

26 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
27 Approval on any material change to the Settlement (including, but not limited to, the scope of
28 release to be granted by Class Members), the Parties will expeditiously work together in good
faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
Approval. The Court's decision to award less than the amounts requested for the Class

1 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
2 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
3 modification to the Agreement within the meaning of this paragraph.

4 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
5 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
6 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.

7 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
8 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
9 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
10 respective counsel, and all Participating Class Members who did not object to the Settlement as
11 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
12 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
13 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
14 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
15 Parties' obligations to perform under this Agreement will be suspended until such time as the
16 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
the amount of the Net Settlement Amount.

17 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
18 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
19 material modification of this Agreement (including, but not limited to, the scope of release to be
20 granted by Class Members), the Plaintiff and Defendants shall each have the right, but not the
21 obligation, to void the Settlement, which either Party must do by giving written notice to the other
22 Party, the final reviewing court, and the Court no later than thirty (30) court days after the final
23 reviewing court's decision vacating, reversing, or materially modifying the Final Order becomes
24 final and non-appealable. The Parties shall nevertheless expeditiously work together in good faith
25 to address the appellate court's concerns and to obtain Final Approval and entry of Judgment,
26 sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after
27 remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class
28 Representative Service Payment or any payments to Class Counsel shall not constitute a material
modification of the Judgment within the meaning of this paragraph, as long as the Gross

1 Settlement Amount remains unchanged.

2
3 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
4 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
5 amended judgment.

6 **13. ADDITIONAL PROVISIONS.**

7 13.1 No Admission of Liability, Class Certification or Representative Manageability
8 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
9 claims. Nothing in this Agreement is intended or should be construed as an admission by
10 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
11 have any liability for any claims asserted; nor should it be intended or construed as an admission
12 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
13 certification and representative treatment is for purposes of this Settlement only. If, for any reason
14 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
15 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
16 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
17 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
18 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
Settlement and this Agreement).

19 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
20 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval
21 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
22 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
23 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
24 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
25 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
26 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
27 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
government agency. The Parties and their counsel agree that they will not publicize the

1 Settlement, or issue any press releases, initiate any contact with the media, respond to any media
2 inquiry, or have any communication with the press about the fact, amount or terms of the
3 Settlement. In addition, the Parties and their counsel agree that they will not engage in any
4 advertising or distribute any marketing materials relating to the Settlement of this case, including
5 but not limited to any postings on any websites, social media, and/or any professional
6 organization, unless ordered by the Court in any manner from which Defendants' identity can
7 reasonably be ascertained. Notwithstanding, the Parties shall undertake any and all disclosures
8 which are required by law including providing notice of the PAGA settlement to the LWDA
pursuant to statute.

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

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

20 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
21 Agreement together with its attached exhibits shall constitute the entire agreement between the
22 Parties relating to the Settlement, superseding any and all oral representations, warranties,
23 covenants, or inducements made to or by any Party, and all understandings among the Parties
24 hereto with respect to the settlement of the Action, including correspondence between Class
Counsel and Defense Counsel and drafts of prior agreements or proposals

25 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
26 and represent that they are authorized by Plaintiff and Defendants, respectively, to take all
27 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement

1 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
2 terms of this Agreement including any amendments to this Agreement, except for signing the
3 documents, including but not limited to this Settlement, that are required to be signed by the Parties.

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

10 13.7 No Prior Assignments. The Parties separately represent and warrant that they
11 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
12 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
13 action, or right released and discharged by the Party in this Settlement. None of the rights,
14 commitments, or obligations recognized under this Settlement may be assigned by any Party,
15 Class Member, Class Counsel, or Defense Counsel without the express written consent of each
16 other Party and their respective counsel. The representations, warranties, covenants, and
17 agreements contained in this Settlement are for the sole benefit of the Parties under this
Settlement, and shall not be construed to confer any right or to avail any remedy to any other
person.

18 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants 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
Parties or their representatives, and approved by the Court.

24 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
25 inure to the benefit of, the successors of each of the Parties.

26 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
27 be governed by and interpreted according to the internal laws of the state of California, without

1 regard to conflict of law principles.

2 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
3 preparation of this Agreement. This Agreement will not be construed against any Party on the
4 basis that the Party was the drafter or participated in the drafting.

5 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
6 entered during Action and in this Agreement relating to the confidentiality of information shall
7 survive the execution of this Agreement.

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

18 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
19 is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

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

28 To Plaintiff:
David Glenn Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl

1 PMB 42554
2 West Hollywood, CA 90069
3 david@spivaklaw.com

4 To Defendants:

5 Nicole Sheth, Esq.
6 Christina Ricci, Esq.
7 KAUFMAN BERGEEST & RYAN
8 21700 Oxnard Street, Suite 1450
9 Woodland Hills, CA 91367
10 Telephone: (818) 990-0992
11 Facsimile: (818) 880-0993

12 Robert B. Forouzandeh, Esq.
13 Reicker, Pfau, Pyle & McRoy, LLP
14 1421 State Street
15 Suite B
16 Santa Barbara, CA 93101
17 rforouzandeh@rppmh.com

18 13.18 Execution in Counterparts. This Agreement may be executed in one or more
19 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
20 Agreement shall be accepted as an original. All executed counterparts and each of them will be
21 deemed to be one and the same instrument if counsel for the Parties will exchange between
22 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
23 the existence and contents of this Agreement.

24 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
25 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
26 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
27 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
28 process.

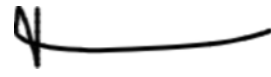
13.20 Invalidity of Any Provision. Before declaring any provision of this Agreement
invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
consistent with applicable precedents so as to define all provisions of this Agreement valid and
enforceable. If any provision of this Agreement or the application thereof is held invalid, the
invalidity shall not affect other provisions or applications of this Agreement which can be given
effect without the invalid provisions or application and, to this end, the provisions of this

1 Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release
2 contained herein may be deemed severed or deleted from this Agreement, except upon waiver in
3 writing by the applicable party.

4
5 Dated: October 28, 2024

6 By: 
KEVIN LYNUM

7
8 Dated: October 25, 2024

9 By: 
Katie Hara Chief People Officer
[NAME/TITLE]
For PROSPECT HOTEL SERVICES,
10 LLC and PROSPECT HOTEL
11 MANAGEMENT, LLC

12
13 THE SPIVAK LAW FIRM

14
15 Dated: October ____, 2024

16 By: _____
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, KEVIN LYNUM, and all
17 others similarly situated

18
19 UNITED EMPLOYEES LAW GROUP

20
21 Dated: October ____, 2024

22 By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, KEVIN LYNUM, and all
23 others similarly situated

24 REICKER, PFAU, PYLE & MCROY, LLP

25
26 Dated: October 25, 2024

27 By: 
ROBERT B. FOROUZANDEH,
Attorneys for Defendants, PROSPECT

KL

1 Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release
2 contained herein may be deemed severed or deleted from this Agreement, except upon waiver in
3 writing by the applicable party.

4
5 Dated: October ____, 2024

By: _____

KEVIN LYNUM

6
7
8 Dated: October 25, 2024

By:  _____

Katie Hara Chief People Officer
[NAME/TITLE]
For PROSPECT HOTEL SERVICES,
LLC and PROSPECT HOTEL
MANAGEMENT, LLC

12
13 THE SPIVAK LAW FIRM

14
15 Dated: October 28, 2024

By:  _____

DAVID GLENN SPIVAK, Attorneys
for Plaintiff, KEVIN LYNUM, and all
others similarly situated

18
19 UNITED EMPLOYEES LAW GROUP

20
21 Dated: October ____, 2024

By: _____

WALTER L. HAINES, Attorneys for
Plaintiff, KEVIN LYNUM, and all
others similarly situated

23
24 REICKER, PFAU, PYLE & MCROY, LLP

25
26 Dated: October 25, 2024

By:  _____

ROBERT B. FOROUZANDEH,
Attorneys for Defendants, PROSPECT

1 Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release
2 contained herein may be deemed severed or deleted from this Agreement, except upon waiver in
3 writing by the applicable party.

4
5 Dated: October ____, 2024

By: _____

KEVIN LYNUM

6
7
8 Dated: October 25, 2024

By:  _____

Katie Hara Chief People Officer
[NAME/TITLE]
For PROSPECT HOTEL SERVICES,
LLC and PROSPECT HOTEL
MANAGEMENT, LLC

12
13 THE SPIVAK LAW FIRM

14
15 Dated: October ____, 2024

By: _____

DAVID GLENN SPIVAK, Attorneys
for Plaintiff, KEVIN LYNUM, and all
others similarly situated

18
19 UNITED EMPLOYEES LAW GROUP

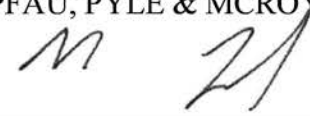
20 Dated: October 29, 2024

By:  _____

WALTER L. HAINES, Attorneys for
Plaintiff, KEVIN LYNUM, and all
others similarly situated

23
24 REICKER, PFAU, PYLE & MCROY, LLP

25 Dated: October 25, 2024

By:  _____

ROBERT B. FOROUZANDEH,
Attorneys for Defendants, PROSPECT

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HOTEL SERVICES, LLC and
PROSPECT HOTEL
MANAGEMENT, LLC

KAUFMAN, BERGEEST AND RYAN LLP

Date: October 25, 2024

By: Nicole Sheth
NICOLE SHETH, Attorneys for
Defendants, PROSPECT HOTEL
SERVICES, LLC and PROSPECT
HOTEL MANAGEMENT, LLC

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EXHIBIT A

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

(case name: *Kevin Lynum v. Prospect Hotel Management, LLC, et al.* and number 23-CVCV-
0012034)

***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 PROSPECT HOTEL SERVICES, LLC and PROSPECT HOTEL MANAGEMENT, LLC (collectively “Defendants”) for alleged wage and hour violations. The Action was filed by one of Defendants’ former employees Kevin Lynum (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of hourly, non-exempt employees (“Class Members”) who worked for Defendants during the Class Period (September 25, 2019 to<<the date of preliminary approval of this Settlement>>); and (2) civil penalties under the California Private Attorney General Act (“PAGA”) for all hourly, non-exempt employees who worked for Defendants during the PAGA Period (September 25, 2022 to <<the date of preliminary approval of this Settlement>>) (“Aggrieved Employees”). The Class does not include the hourly, non-exempt employees who worked at Defendant Prospect Hotel Management, LLC’s corporate headquarters.

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

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

The above estimates are based on Defendants’ records showing that **you worked <<__>> Work Weeks** during the Class Period and **you worked <<__>> PAGA Pay Periods**

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

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

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

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

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

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

26 SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

27 You Don't Have to Do 28 Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendants that are covered by this Settlement (Released Claims).
29 You Can Opt-out of the 30 Class Settlement but not the PAGA Settlement 31 The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

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	You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiffs release Defendants from civil penalties it may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose or you or your attorney may also address the Court and object during the Final Approval Hearing. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice. If you object to the Settlement, you will remain a member of the Class (defined below), and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object.
You Can Participate in the <<FinalApprovalHearing Date>> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / PAGA Pay Periods Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and Individual PAGA Payment (if any) depend on how many Work Weeks you worked at least one day during the Class Period and how many PAGA Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Work Weeks and number of PAGA Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.
1. WHAT IS THE ACTION ABOUT? Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay wages, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay	
4	
<i>Lynum v. Prospect Hotel Management, LLC, et al.</i> Class Action and PAGA Settlement Agreement	

1 wages, failure to properly pay vacation time , failure to provide meal periods, and related
2 violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for
3 civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.)
4 (“PAGA”). Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak
5 Law Firm and Walter L. Haines of United Employees Law Group (“Class Counsel.”)

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

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

9 So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the
10 merits. In the meantime, Plaintiffs and Defendants hired an experienced, neutral mediator in an
11 effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather
12 than continuing the expensive and time-consuming process of litigation. The negotiations were
13 successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to
14 jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement,
15 Plaintiffs and Defendants have negotiated a proposed Settlement that is subject to the Court’s
16 Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims.
17 By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.
18 Defendants settled the Lawsuit to avoid additional expense, inconvenience, and interference with
19 their business operations. Defendants retain the right to defend themselves against any of the
20 allegations involved in the Lawsuit if for any reason the Settlement is not approved by the Court.

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

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

28 1. Gross Settlement Amount. Defendants Will Pay \$429,000 as the Gross Settlement
Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an
account controlled by the Administrator of the Settlement. The Administrator will use the Gross
Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class
Representative Service Payments, Class Counsel’s attorney’s fees and expenses, the
Administrator’s expenses, and penalties to be paid to the California Labor and Workforce
Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will
fund the Gross Settlement not more than 14 days after the Judgment entered by the Court becomes
final. The Judgment will be final on the date the Court enters Judgment, or a later date if
Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. 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:

A. Attorney Fees and Costs. Up to \$143,000. (33.33% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$15,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Class Representative Service Payments. Up to \$15,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

C. Administration Expenses. Up to \$10,000 to the Administrator for services administering the Settlement.

D. PAGA Penalties. Up to \$5,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Pay Periods.

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

Based on their records, Defendants estimated that, as of the date of the Settlement, (1) there are 284 Class Members who worked a total of 14,283 Work Weeks during the Class period and (2) there were 139 Aggrieved Employees who worked a total of 3,000 Pay Periods during the PAGA Period. If the Work Weeks and/or Class Members as of the date the Court approves the settlement exceeds the referenced 14,283 Work Weeks and/or 284 Class Members by more than 10%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class Representative Payment, and the LWDA payment, will increase proportionally according to the number of additional Work Weeks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Work Weeks.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are 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.

1 Although Plaintiff and Defendants have agreed to these allocations, neither side is giving
2 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
3 are responsible for paying all taxes (including penalties and interest on back taxes) on any
4 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.

5 5. Need to Promptly Cash Payment Checks. The front of every check issued for
6 Individual Class Payments and Individual PAGA Payments will show the date when the check
7 expires (the void date). If you don't cash it by the void date, your check will be automatically
8 cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
9 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

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

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

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

23 8. Administrator. The Court has appointed a neutral company, Phoenix Class Action
24 Administration Solutions (the "Administrator") to send this Notice, calculate and make payments,
25 and process Class Members' Requests for Exclusion. The Administrator will also decide Class
26 Member Challenges over Work Weeks, 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.

9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for claims, transactions, debts, liabilities, demands, actions, causes of action or occurrences of every nature and description and wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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, predecessors, successors, and assigns, forever release Released Parties from any and all claims, transactions, debts, liabilities, demands, actions, causes of action or occurrences of ever nature and description that accrued during the Class Period, under state law and the Wage Orders of the California Industrial Welfare Commission, that were alleged or which could have been alleged based on the factual allegations in the First Amended Complaint in the Action, including but not limited to failure to pay wages, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to properly pay vacation time,, failure to provide meal periods, all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2 below and all claims arising under California Labor Code Sections 201-204, 206, 218.6, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2801, and/or those arising under the Industrial Welfare Commission Wage Orders, California Business and Professions Code section 17200 et seq., California Code of Regulations, title 8, Section 11160, California Civil Code sections 3287, 3289, and 3294, and California Code of Civil Procedure section 1021.5.s. Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release 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.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or their related entities based on the PAGA Period facts alleged in the First Amended Complaint, Plaintiff's PAGA Notice, or otherwise in this Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

1 All Participating and Non-Participating Class Members who are Aggrieved Employees
2 are deemed to forever release and discharge, on behalf of themselves and their respective former
3 and present representatives, agents, attorneys, heirs, administrators, predecessors, successors, and
4 assigns, the Released Parties, from all claims for all PAGA penalties and claims that were alleged,
5 or reasonably could have been alleged, based on the PAGA Period facts stated in the First
6 Amended Complaint and the PAGA Notice and ascertained in the course of the Action including
but not limited to failure to pay wages, failure to authorize and permit rest periods, failure to
indemnify for business expenses, failure to issue proper wage statements, failure to timely pay
wages, failure to properly pay vacation time, failure to provide meal periods, and related
allegations.

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

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

11 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
12 Payments by (a) dividing \$1,250 by the total number of PAGA Pay Periods worked by all
13 Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked
by each individual Aggrieved Employee.

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

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

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

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

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

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

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

7 Email, fax, or mail a written and signed letter with your name, present address, telephone
8 number, and a simple statement that you do not want to participate in the Settlement. You may
9 use the enclosed Election Not To Participate In Settlement form for this purpose. The
10 Administrator will exclude you based on any writing communicating your request be excluded.
11 Be sure to personally sign your request, identify the Action as *Kevin Lynum vs. Prospect Hotel*
12 *Management, LLC*, Case No. 23-CVCV-0012034, and include your identifying information (full
13 name, address, telephone number, approximate dates of employment, and social security number
14 for verification purposes). You must make the request yourself. If someone else makes the
15 request for you, it will not be valid. You should send your Request for Exclusion to the
16 Administrator by email, fax, or send by regular U.S. mail. **The Administrator must be sent**
17 **your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section
18 9 of the Notice has the Administrator's contact information. If you are an Aggrieved Employee,
19 you will still receive an Individual PAGA Payment, will release only his or her PAGA claims,
20 will not receive any compensation from the Settlement for the Class claims, and will not have any
21 right to object, appeal, or comment thereon

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

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

24 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
25 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
26 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
27 Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to**
28 **the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what

1 you object to, why you object, and any facts that support your objection. Make sure you identify
2 the Action, *Kevin Lynum vs. Prospect Hotel Management, LLC*, Case No. 23-CVCV-0012034,
3 and include your name, current address, telephone number, and approximate dates of employment
4 for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact
information. You may use the enclosed Objection form for this purpose. You should send your
objection to the Administrator by email, fax, or send by regular U.S. mail.

5 Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at
6 your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready
7 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 However, if you would like to object to the Settlement, you must not submit a Request for
9 Exclusion (*i.e.*, must not opt out). If you submit both a Request for Exclusion and an objection,
10 you will be excluded from the Settlement and your objection will not be considered.

11 If you object, but the Court approves the Settlement, you will be bound by the terms of the
Settlement in the same way as a Class Member who does not object.

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

13 You can, but don't have to, attend the Final Approval Hearing on ____ at (time) in Department
14 Dept. 03 of the Mariposa Superior Court, located at , 5088 Bullion Street, Mariposa, CA 95338.
15 At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how
16 much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiffs, and the
Administrator. The Court will invite comment from objectors, Class Counsel and Defense
17 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>
18 (<https://www.<<CourtVirtualAppearanceLink>>>). Check the Court's website for the most current
information.

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

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

23 The Agreement sets forth everything Defendants and Plaintiff have promised to do under the
24 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
Settlement documents is to go to (specify entity)'s website at (url). You can also telephone or send
25 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
26 entering the Case Number for the Action, Case No. 23-CVCV-0012034. You can also make an
appointment to personally review court documents in the Clerk's Office at the by calling ____.

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

Defendants' Counsel:

Name of Attorneys: Nicole Sheth, Esq. and Christina Ricci, Esq.
Email Addresses: nsheth@kbrlaw.com; cricci@kbrlaw.com
Name of Firm: KAUFMAN BORGEEST & RYAN LLP
Mailing Address: 21700 Oxnard Street
Woodland Hills, CA 91367
Telephone: (818) 880-0992

Name of Attorney: Robert B. Forouzandeh, Esq.
Email Address: rforouzandeh@rppmh.com
Name of Firm: REICKER, PFAU, PYLE & MCROY, LLP
Mailing Address: 1421 State Street
Suite B
Santa Barbara, CA 93101
Telephone: (805) 966-2440

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 Unclaimedx Property Fund at (800) 992-4647.

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

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

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EXHIBIT B

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

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

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

10 *Lynum v. Prospect Hotel Management, LLC* Class Action Administrator
11 c/o _____
12 _____
13 _____

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

19 _____
20 (Typed or Printed Name)

21 _____
22 (Address)

23 _____
24 (City, State, Zip Code)

25 _____
26 (Telephone Number, Including Area Code)

27 _____
28 (Identification Number)

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

Dated: ____.
(Signature)

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EXHIBIT C

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

2 Superior Court of The State of California
3 For The County of Mariposa
4 *Kevin Lynum v. Prospect Hotel Management, LLC*, Case No. 23-CVCV-0012034

5 Indicate Name/Address Changes, if any:

6 <<Name>>

<<Address>>

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

XX - XX -

7 The amount of your estimated Individual Class Payment is based upon the number of eligible
8 Work Weeks you worked between September 25, 2019 and _____[the date preliminary
9 approval of the settlement is entered by the court]. The amount of your estimated Individual
10 PAGA Payment is based upon the number of PAGA Pay Periods you worked between September
11 25, 2022 and _____[the date preliminary approval of the settlement is entered by the court].
12 “Work Week means any week during which a Class Member worked for Defendants for at least
13 one day during the Class Period excluding the workweeks the Class Member worked at Defendant
14 Prospect Hotel Management, LLC’s corporate headquarters. “PAGA Pay Period” means any Pay
15 Period during which you worked for Defendants at least one (1) day as a non-exempt, hourly
16 employees excluding the workweeks you worked at Defendant Prospect Hotel Management,
17 LLC’s corporate headquarters (if any). The number of Work Weeks and PAGA Pay Periods
18 applicable to your claim are set forth below.

14 **YOUR ELIGIBLE WORK WEEKS**

15 Defendants’ records indicate that you worked <<number of Work Weeks>> Work Weeks
16 between September 25, 2019 and _____[the date preliminary approval of the settlement is
17 entered by the court] and <<number of PAGA Pay Periods>> PAGA Pay Periods between
18 September 25, 2022 through _____ [the date preliminary approval of the settlement is entered by
the court].

19 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

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

25 If you wish to dispute the number of Work Weeks and/or PAGA Pay Periods credited to you, or
26 anything else about your employment status, you must complete and return this form by
27 indicating what you believe is incorrect on the blank lines below and return it on or before
<<RESPONSE DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail with
proof of the submission date (such as a postmark or delivery service date stamp). You may use

1 this Work Weeks/PAGA Pay Periods Dispute Form for this purpose. You must also send any
2 documents or other information that you contend supports your belief that the information set
3 forth above is incorrect. The Administrator will resolve any dispute based upon Defendants'
4 records and any information you provide. Please be advised that the information on this Work
Weeks Dispute Form is presumed to be correct unless the documents you submit are company
records from Defendants.

5 _____
6 _____
7 _____

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

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EXHIBIT D

1 **OBJECTION FORM**

2 ***Kevin Lynum v. Prospect Hotel Management, LLC***
3 **Superior Court of the State California, County of Mariposa**
4 **Case No. 23-CVCV-0012034**

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

6 CPT ID: <<CPT ID>>

7 <<Name>>

8 <<Address1>>

<<Address2>>

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

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (_____) _____ - _____

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

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

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

26 [] I OBJECT to the *Kevin Lynum v. Prospect Hotel Management, LLC* Settlement on the
27 following grounds (if additional space necessary, please include additional sheets of paper):

28 _____

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

Executed on _____, 2024

(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>>:

Kevin Lynum v. Prospect Hotel Management, LLC Administrator
[ADDRESS]

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EXHIBIT E

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1 be fair, adequate, and reasonable, and that any final determination of those issues will be made at
2 the final hearing. The Court will make a determination at the hearing on the motion for final
3 approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement
4 is fair, adequate and reasonable to the Settlement Class.

5 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
6 non-exempt, hourly employees, who worked for Defendants anytime during the Class Period. The
7 “Class Period” shall mean the period of time from September 25, 2019, through the date of
8 preliminary approval of this Settlement. The Class does not include the hourly, non-exempt
9 employees who worked at Defendant Prospect Hotel Management, LLC’s corporate
10 headquarters.

11 3. Based on their records, Defendants estimate that, as of the date of the Settlement
12 Agreement, (1) there are 284 Class Members who worked a total of 14,283 Work Weeks during
13 the Class period and (2) there were 139 Aggrieved Employees who worked a total of 3,000 PAGA
14 Pay Periods during the PAGA Period. If the Work Weeks and/or Class Members as of the date
15 the Court approves the settlement exceeds the referenced 14,283 Work Weeks and/or 284 Class
16 Members by more than 10%, the Gross Settlement Amount, including the Class Counsel Fees
17 Payment, the Class Representative Service Payment, and the LWDA payment, will increase
18 proportionally according to the number of additional Work Weeks or Class Members, whichever
19 results in a higher increase in the Gross Settlement Amount.

20 4. “Effective Date” means the later of the following: (1) the date the Final Approval
21 is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and
22 no appeal is taken of the Final Approval Order, sixty (60) days after the Final Approval is signed;
23 or (3) if an appeal is taken from the Court’s overruling of objections to the Settlement, ten (10)
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1 days after the appeal is withdrawn or after an appellate decision affirming the final approval
2 decision becomes final.

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

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

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

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

7
8 9. Not later than three (3) business days after the Administrator's receipt of any
9 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
10 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
11 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
12 the Notice Packet to the most current address obtained. The Administrator has no obligation to
13 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
14 returned by the USPS a second time.

15
16 10. Class Counsel's contact information is David Glenn Spivak, Esq., The Spivak Law
17 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel's
18 contact information is Nicole Sheth, Esq. and Christina Ricci, Esq., Kaufman, Borgeest, and Ryan
19 LLP, 21700 W Oxnard St. Suite 1450, Woodland Hills, CA 91367 and Robert B. Forouzandeh,
20 Esq., Reicker, Pfau, Pyle & McRoy, LLP, 1421 State Street, Suite B, Santa Barbara, CA, 93101.

21
22 11. The deadlines for Class Members' written objections, Challenges to Work Weeks
23 and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an additional
24 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
25 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
26 with the re-mailed Notice Packet.

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

10 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
11 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
12 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
13 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
14 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
15 the Class Member's election to be excluded from the Settlement and includes the Class Member's
16 name, address and email address or telephone number. To be valid, a Request for Exclusion must
17 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
18 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required. The
19 date of the initial mailing of the Notice Packet, and the date the signed request for exclusion was
20 postmarked, shall be conclusively determined according to the records of the Settlement
21 Administrator. The Settlement Administrator shall immediately provide copies of all Requests
22 for Exclusion to Class Counsel and Defense Counsel and shall report the number of Requests for
23 Exclusion that it receives, to the Court, in its declaration to be provided in advance of the Final
24 Approval Hearing.
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14. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

15. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the Participating Class Member actually receives the Notice Packet or objects to the Settlement. A Class Member cannot submit both a Request for Exclusion and an Objection. If a Class Member subjects both an Objection and Request for Exclusion, the Request for Exclusion will control and the Objection will be void.

16. Every Class Member who submits a valid and timely Request for 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. Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiffs pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class

1 Member.

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

17 18. Objections to Settlement. The Plaintiff may not object to the Settlement. Only
18 Participating Class Members may object to the class action components of the Settlement and/or
19 this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for
20 the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class
21 Representative Service Payment.
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23 19. Participating Class Members may send written objections, signed by the Objecting
24 Class Member or his or her attorney, along with supporting papers, to the Administrator, by fax,
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1 email, or mail. All written objections must contain the Class Member's address, telephone
2 number, and reference to the Action. In the alternative, Participating Class Members may appear
3 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
4 Hearing. A Participating Class Member who elects to send a written objection to the
5 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice
6 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). The
7 Objection form attached as Exhibit D may be used for this purpose but is not required. The date
8 of the initial mailing of the Notice Packet, and the date the signed objection was postmarked, shall
9 be conclusively determined according to the records of the Settlement Administrator. The
10 Settlement Administrator shall send any objections it receives to Defense Counsel and Class
11 Counsel within five (5) business days of receipt. The Court retains final authority with respect to
12 consideration and admissibility of any Class Member objections. If a Class Member objects to
13 the Settlement, the Class Member will remain a member of the Class and if the Court approves
14 this Agreement, the Class Member will be bound by the terms of the Settlement in the same way
15 and to the same extent as a Class Member who does not object.

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

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

5 22. The Court approves, as to form and content, the Class Notice in substantially the
6 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
7 substantially the form attached as Exhibit B to this Order, the Work Weeks Dispute form in
8 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially
9 the form attached as Exhibit D to this Order.

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

12 24. The Court approves, for settlement purposes only, Kevin Lynam as the Class
13 Representative.

14 25. The Court approves Phoenix Class Action Administration Solutions as the
15 Administrator.

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

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

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

22 29. A Final Approval Hearing shall be held on ____ at .m. in Department Dept. 03
23 of the Superior Court for the State of California, County of Mariposa, located at the , 5088 Bullion
24

1 Street, Mariposa, CA 95338 to consider the fairness, adequacy and reasonableness of the proposed
2 Settlement preliminarily approved by this Preliminary Approval Order, and to consider the
3 application of Class Counsel for attorneys' fees and costs and the Class Representative Service
4 Payment to the Class Representative. The notice of motion and all briefs and materials in support
5 of the motion for final approval of class action settlement and motion for attorneys' fees and
6 litigation costs shall be served and filed with this Court on or before _____. Plaintiff's counsel must
7 give notice to any objecting party of any continuance of the hearing of the motion for final
8 approval.
9

10 30. If for any reason the Court does not execute and file a Final Approval Order and
11 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
12 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
13 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
14 litigation, as more specifically set forth in the Settlement.
15

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

21 **DATE**

22 **THE HONORABLE ANITA BRYANT**

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

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1 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
2 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
3 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
4 and the evidence and argument received by the Court in conjunction with the motions for
5 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
6 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
7 DETERMINATIONS¹:
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9 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
10 to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary
11 Approval of Class Action Settlement of ____, the Notice Packet was sent to each Class Member
12 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
13 Settlement, their right to receive their proportional share of the Settlement, their right to request
14 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
15 person or by counsel at the final approval hearing and be heard regarding final approval of the
16 Settlement. Adequate periods of time were provided by each of these procedures. No member of
17 the Settlement Class presented written objections to the proposed Settlement as part of this notice
18 process, stated an intention to appear, or actually appeared at the final approval hearing.
19

20 2. For purposes of this Final Order and Judgment, the Class Members are non-
21 exempt, hourly employees, who worked for Defendants during the Class Period of September 25,
22 2019 to <<the date of preliminary approval of this Settlement>> ("Settlement Class Period"). The
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25 _____
26 ¹ A true and correct copy of the Court's ruling on the Motion for Preliminary Approval of Class
27 Action Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference.
28 A true and correct copy of the Court's Minute Order dated [REDACTED] is attached hereto as **Exhibit B**
and incorporated by reference.

1 Class does not include the hourly, non-exempt employees who worked at Defendant Prospect
2 Hotel Management, LLC's corporate headquarters.

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 Defendants have 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 Plaintiffs pre-filing letter to
19 the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee
20 unless such Aggrieved Employee is a Participating Class Member.
21

22 **“Released Claims”** shall mean all claims, transactions, debts, liabilities, demands,
23 actions, causes of action or occurrences of every nature and description that accrued during the
24 Class Period as stated in Paragraph 6.1 of the Settlement. . **“Released Parties”** shall mean
25 Defendants, their officers, directors, employees, agents and other individuals and entities as
26 described in Paragraph 1.42 of the Settlement.
27

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

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

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

a. Class Counsel fees & costs of \$143,000 in attorneys' fees and \$_____ in litigation costs to Class Counsel;

b.	\$15,000 as a Class Representative Service Payment award payable to
----	---

1 Plaintiff Kevin Lynum for his service as a Class Representative;

2 c. \$_____in costs of the Administrator payable to Phoenix Class Action
3 Administration Solutions for its services as the Administrator; and

4 d. Payment of \$3,750 (75% of the \$5,000 PAGA penalty) to the LWDA.

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

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

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

22 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
23 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
24 Share check. After the expiration of the 180-day period, on Defendants' behalf, the Administrator
25

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

4 11. The Parties shall file a final accounting report by _____. A non-appearance case
5 review re submission of a final report is scheduled for ____ at _____.m. in Department Dept. 03.
6 The Parties shall also prepare and file a stipulation and proposed order and proposed Amended
7 Final Order and Judgment by _____ which includes the amount of distribution of unpaid cash
8 Residue, and unclaimed or abandoned funds to the non-party, the accrued interest on that sum.
9 The stipulation shall be signed by counsel for the class and defense counsel in accord with the
10 proposed Amended Final Order and Judgment. If there are objections by any party or non-party,
11 class counsel shall immediately notify the Court and the matter will be set for further hearing. A
12 non-appearance hearing for the lodging of the stipulation and proposed order and separate
13 amended judgment is scheduled for ____ at _____.m. in Department Dept. 03.
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 Defendants
17 deposit funds for distribution by the Administrator to Participating Class Members in accordance
18 with the Settlement.
19

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

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

25 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
26 provided by the Settlement and this Final Order and Judgment.
27

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

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

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

23 _____
24 **DATE**

25 **THE HONORABLE ANITA BRYANT**
26

EXHIBIT 2



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069

1801 Century Park East 25th Fl Los Angeles CA 90067

(213) 725-9094

(213) 634-2485

spivaklaw.com

Mail

Office

Tel

Fax

Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 25, 2023

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

Re: Kevin Lynum / Prospect Hotel Services

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Kevin Lynum (hereafter “Lynum” or “Complainant”) provides notice that Prospect Hotel Services, LLC, a Delaware limited liability company, Prospect Hotel Management, LLC, a Delaware limited liability company and related entities (collectively “the Prospect Hotel Services Employers” or “the Employers”) violated his rights and those of all other individuals the Prospect Hotel Services Employers have employed or otherwise contracted with in California as hourly, non-exempt employees of Prospect Hotel Services Employers in California, including but not limited to housekeepers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Lynum hereby provides this notice to the Labor & Workforce Development Agency and the Prospect Hotel Services Employers and their agents and representatives.

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

Statement of Facts

On approximately May 20, 2023, the Prospect Hotel Services Employers began to employ Lynum in Midpines in the position of hourly, non-exempt housekeeper. The Prospect Hotel Services Employers continuously employed him in that capacity until on or about June 12, 2023 when his employment ended.

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

The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Prospect Hotel Services Employers employed Lynum and the other Aggrieved Employees in excess of eight hours per day and 40 hours per week. During workdays exceeding eight hours and during workweeks exceeding 40 hours, the Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Prospect Hotel Services Employers employed Lynum and the other Aggrieved Employees in excess of 12 hours per day. During workdays exceeding 12 hours, the Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

At all relevant times, the Prospect Hotel Services Employers failed to provide Lynum and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during meal periods. The Prospect Hotel Services Employers subjected Lynum and the other Aggrieved Employees to work related interruptions during meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods. The Prospect Hotel Services Employers also failed to pay premium wages for days on which they failed to provide Lynum and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Prospect Hotel Services Employers failed to authorize and permit Lynum and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during rest breaks. The Prospect Hotel Services Employers subjected Lynum and the other Aggrieved Employees to work related interruptions during rest breaks. The Prospect Hotel Services Employers also failed to pay premium wages for days on which they failed to authorize and permit Lynum and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Prospect Hotel Services Employers required Lynum and all of the other Aggrieved Employees to incur certain business expenses in the course of

performing their duties. The Prospect Hotel Services Employers required Lynum and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Prospect Hotel Services Employers did not provide these items and did not reimburse Lynum and the other Aggrieved Employees for these items.

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

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

The Prospect Hotel Services Employers failed to maintain accurate employee records of Lynum and all of the other Aggrieved Employees.

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

- (a) The Prospect Hotel Services Employers failed to pay Lynum and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Prospect Hotel Services Employers failed to provide Lynum and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Prospect Hotel Services Employers failed to authorize and permit Lynum and all of the other Aggrieved Employees to take rest breaks in compliance with California law;

- (d) The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees at one hour's pay for each day in which the Prospect Hotel Services Employers failed to provide them with one or more meal periods as required by law;
- (e) The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees at one hour's pay for each day in which the Prospect Hotel Services Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Prospect Hotel Services Employers failed to indemnify Lynum and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Prospect Hotel Services Employers unlawfully deducted wages belonging to Lynum and all of the other Aggrieved Employees;
- (h) The Prospect Hotel Services Employers knowingly and intentionally failed to provide Lynum and all of the other Aggrieved Employees with accurate wage statements;
- (i) The Prospect Hotel Services Employers willfully failed to timely pay Lynum and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Prospect Hotel Services Employers and when their employment ended; and
- (j) The Prospect Hotel Services Employers failed to maintain accurate employment records pertaining to Lynum and all of the other Aggrieved Employees.

Accordingly, Lynum now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Prospect Hotel Services Employers' alleged violations of the Labor Code and the Wage Order.

// /

The Wage Order

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

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

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

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Prospect Hotel Services Employers, Lynum, and all of the Aggrieved Employees were covered by the Wage Order because the Prospect Hotel Services Employers operated, and Lynum, and all of the Aggrieved Employees, worked for one or more hotels, motels, trailer parks, and camps. Accordingly, Lynum and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half ($1\frac{1}{2}$) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth ($1/40$) of the employee's weekly salary.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching

out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

The Prospect Hotel Services Employers employed Lynum and the other Aggrieved Employees in excess of eight hours per day and 40 hours per week. During workdays exceeding eight hours and during workweeks exceeding 40 hours, the Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

The Prospect Hotel Services Employers employed Lynum and the other Aggrieved Employees in excess of 12 hours per day. During workdays exceeding 12 hours, the Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Prospect Hotel

Services Employers, Lynum and all of the other Aggrieved Employees earned during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Prospect Hotel Services Employers failed to pay to Lynum and all of the other Aggrieved Employees overtime and double time premium pay on such , and other non-discretionary compensation.

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

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

// /

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. . . .

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Prospect Hotel Services Employers failed to provide Lynum and all of the other Aggrieved Employees with all timely meal periods. The Prospect Hotel Services Employers denied Lynum and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods. Furthermore, the Prospect Hotel Services Employers failed to pay premium wages for days on which they failed to provide Lynum and all of the other Aggrieved Employees with timely

meal periods. Accordingly, Lynum now seeks civil penalties for these Labor Code violations that the Prospect Hotel Services Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of

each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

In addition, Labor Code section 226.7 states:

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

The Prospect Hotel Services Employers failed to authorize and permit Lynum and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Prospect Hotel Services Employers did not seek an exemption from the rest period protections of the Wage Order from

the California Division of Labor Standards Enforcement. The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during rest breaks. Moreover, the Prospect Hotel Services Employers failed to pay Lynum and all of the other Aggrieved Employees premium wages on workdays the Prospect Hotel Services Employers failed to provide Lynum and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Lynum now seeks civil penalties for these Labor Code violations that the Prospect Hotel Services Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

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

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

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

Wage Order, § 9(B).

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

As described above, the Prospect Hotel Services Employers required Lynum and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Prospect Hotel Services Employers required Lynum and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Prospect Hotel Services Employers did not provide these items and did not reimburse Lynum and the other Aggrieved Employees for these items. Accordingly, Lynum seeks civil penalties for these Labor Code violations that the Prospect Hotel Services Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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

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

At all relevant times during the applicable limitations period, the Prospect Hotel Services Employers violated Labor Code section 226 because they did not properly and

accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Prospect Hotel Services Employers failed to state in the wage statements they issued to Lynum and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Prospect Hotel Services Employers knowingly and intentionally failed to state on the wage statements they issued to Lynum and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, gross wages earned, net wages earned, and other required information.

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

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

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

The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the

Prospect Hotel Services Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Lynum now seeks civil penalties for the Labor Code violations that the Prospect Hotel Services Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 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 Prospect Hotel Services Employers failed to pay Lynum and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Lynum, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. Additionally, the Prospect Hotel Services Employers failed to issue to Lynum and all of the other Aggrieved Employees whose employment ended their final paychecks until the next

regular pay day following the termination. By failing to pay Lynum and all of the other Aggrieved Employees as set forth above at the end of employment, the Prospect Hotel Services Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Lynum seeks civil penalties from the Prospect Hotel Services Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the

number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

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

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

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Kevin Lynum will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a

LWDA / The Prospect Hotel Services Employers
Re: Kevin Lynum
September 25, 2023
Page 23 of 23

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

Sincerely,



Caroline Tahmassian, Esq.
caroline@spivaklaw.com

cc: Kevin Lynum

Mr. Walter L. Haines Esq.
United Employees Law Group
8605 Santa Monica Bl.
PMB 63354
West Hollywood, CA 90069
walter@uelglaw.com

Prospect Hotel Services, LLC
c/o Mr. Robert B. Forouzandeh Esq.
Reicker, Pfau, Pyle & McRoy, LLP
1421 State Street
Suite B
Santa Barbara, CA 93101
rforouzandeh@rppmh.com

Prospect Hotel Management, LLC
c/o Mr. Robert B. Forouzandeh Esq.
Reicker, Pfau, Pyle & McRoy, LLP
1421 State Street
Suite B
Santa Barbara, CA 93101
rforouzandeh@rppmh.com

EXHIBIT 3

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

7 Attorneys for Plaintiff(s),
8 KEVIN LYNUM, and all others similarly situated
9 (Additional attorneys for Plaintiff(s) on next page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MARIPOSA**
12 **(UNLIMITED JURISDICTION)**

13 KEVIN LYNUM, on behalf of himself and all
14 others similarly situated, and the general public,

15 *Plaintiff(s),*

16 vs.

17 PROSPECT HOTEL SERVICES, LLC, a
18 Delaware limited liability company; PROSPECT
HOTEL MANAGEMENT LLC, a Delaware
19 limited liability company; and DOES 1–50,
20 inclusive,

21 *Defendant(s).*

ELECTRONICALLY FILED
Mariposa Superior Court
9/25/2023 10:12 AM
Kelly Estep
Court Clerk

Case No.

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.)

JURY TRIAL DEMANDED



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EMPLOYEE RIGHTS

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

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

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ADDITIONAL ATTORNEY(S) FOR PLAINTIFF(S)

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



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

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

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

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants Prospect Hotel Services, LLC, a
7 Delaware limited liability company, Prospect Hotel Management, LLC, a Delaware limited
8 liability company, and Does 1 through 50, inclusive (collectively “Defendants”).

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

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

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

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

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

18 (F) Indemnify for necessary work-related expenditures;

19 (G) Only deduct wages lawfully;

20 (H) Issue only accurate and complete itemized wage statements;

21 (I) Timely pay wages upon termination of employment;

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

24 **II. THE PARTIES**

25 3. Plaintiff Kevin Lylum is a resident of California.

26 4. Defendant Prospect Hotel Services, LLC is a limited liability company organized
27 and existing under the laws of Delaware and also a citizen of California based on Plaintiff’s
28 information and belief.

5. Defendant Prospect Hotel Management, LLC is a limited liability company
organized and existing under the laws of Delaware and also a citizen of California based on
Plaintiff’s information and belief.



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8605 Santa Monica Bl
PMB 42554
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(213) 725-9094 Tel
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25th Fl
Los Angeles, CA 90067

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

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

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

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

21 **III. CLASS ALLEGATIONS**

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

27 11. **Class Definition:** The Class is defined as follows: All persons Defendants
28 employed in California hourly, non-exempt employees of Defendants in California, including but
not limited to housekeepers, individuals performing work comparable to the aforementioned,
compensated comparably to the aforementioned, individuals in similar positions, at any time
during the period beginning four years prior to the filing of this action and ending on the date that



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Mail:
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PMB 42554
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(213) 725-9094 Tel
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 final judgment is entered in this action (“Class” or “Class Members”).

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

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

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

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

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

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

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

21 E. Whether Defendants knowingly and intentionally failed to provide the
22 class with accurate and complete itemized wage statements;

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

25 G. Whether Defendants engaged in unfair competition within the meaning of
26 Business and Professions Code sections 17200, et seq., with respect to the Class; and

27 H. Whether Class Members are entitled to restitution of money or property
28 that Defendants may have acquired from them through alleged Labor Code violations.

15. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.
Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor



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

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

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

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

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

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

IV. STATEMENT OF FACTS

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

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

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;



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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Lylum, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Lylum, and all of the Class Members, worked for one or more hotels, motels, trailer parks, camps. Accordingly, Lylum and all of the other Class Members are entitled to the protections the Wage Order provides.

20. On approximately May 20, 2023, the Defendants began to employ Lylum in Midpines in the position of hourly, non-exempt housekeeper. The Defendants continuously employed him in that capacity until on or about June 12, 2023 when his employment ended.

21. At all relevant times, the Defendants issued wages to Lylum and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Defendants classified Lylum and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

22. At all relevant times, the Defendants failed to compensate Lylum and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. The Defendants required Lylum and the other Class Members to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Defendants did not pay Lylum and the other Class Members for time restricted to



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 the premises on monitoring electronic communication devices during meal periods. Defendants
2 also arbitrarily rounded down the records of time worked by Lynum and the other Class Members,
3 denying them regular, minimum and overtime wages they had earned.

4 23. At all relevant times, the Defendants failed to compensate Lynum and all of the
5 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
6 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
7 employed Lynum and the other Class Members in excess of eight hours per day and 40 hours per
8 week. During workdays exceeding eight hours and during workweeks exceeding 40 hours, the
9 Defendants required Lynum and the other Class Members to remain on the premises at all times
10 and to monitor electronic communication devices at all times, including during breaks and meal
11 periods. The Defendants did not pay Lynum and the other Class Members for time restricted to
12 the premises on monitoring electronic communication devices during meal periods.

13 24. At all relevant times, the Defendants failed to provide Lynum and all of the other
14 Class Members with all timely 30-minute, off-duty meal periods. The Defendants required Lynum
15 and the other Class Members to remain on the premises at all times and to monitor electronic
16 communication devices at all times, including during meal periods. The Defendants subjected
17 Lynum and the other Class Members to work related interruptions during meal periods. The
18 Defendants did not pay Lynum and the other Class Members for time restricted to the premises
19 on monitoring electronic communication devices during meal periods. The Defendants also failed
20 to pay premium wages for days on which failed to provide Lynum and all of the other Class
21 Members with meal periods as required by law.

22 25. At all relevant times, the Defendants failed to authorize and permit Lynum and all
23 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
24 or major portion thereof. The Defendants required Lynum and the other Class Members to remain
25 on the premises at all times and to monitor electronic communication devices at all times,
26 including during rest breaks. The Defendants subjected Lynum and the other Class Members to
27 work related interruptions during rest periods. The Defendants also failed to pay premium wages
28 for days on which failed to authorize and permit Lynum and all of the other Class Members to
take rest breaks as required by law.

26. At all relevant times, the Defendants required Lynum and all of the other Class
Members to incur certain business expenses in the course of performing their duties. The



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25th Fl
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1 Defendants required Lynum and all of the other Class Members to supply mobile phones to
2 perform their job duties. However, the Defendants did not provide these items and did not
3 reimburse Lynum and the other Class Members for these items.

4 27. At all relevant times, the Defendants unlawfully deducted wages belonging to
5 Lynum and all of the other Class Members by rounding down their hours worked.

6 28. At all relevant times, the Defendants failed to issue to Lynum and all of the other
7 Class Members complete and accurate wage statements that state all hours worked at the correct
8 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
9 the wage statements they issued to Lynum and all of the other Class Members the unpaid wages
10 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
11 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
12 wages earned, gross wages earned, net wages earned, and related information.

13 29. At all relevant times, the Defendants also failed to timely pay Lynum and all of
14 the other Class Members all earned wages as described above during and at the conclusion of
15 employment.

16 30. At all relevant times, the Defendants failed to maintain accurate employee records
17 of Lynum and all of the other Class Members.

18 31. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
19 unlawful practices and policies, Plaintiff and the Class Members were:

- 20 A. Not provided with all off duty meal periods;
- 21 B. Not authorized and permitted to take all rest break periods;
- 22 C. Not paid one hour's pay for each workday in which Defendants failed to
23 authorize and permit them to take one or more timely rest periods;
- 24 D. Not paid one hour's pay for each workday in which Defendants failed to
25 provide them with one or more timely meal periods;
- 26 E. Not paid all wages earned, including, but not limited to, minimum, regular,
27 and overtime wages for work performed while clocked out;
- 28 F. Not indemnified for all necessary business expenditures incurred during
the discharge of their duties;
- G. Not provided with accurate and complete wage statements; and
- H. Not timely paid all earned and unpaid wages at the time their employment



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ended.

FIRST CAUSE OF ACTION

**FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE
CORRECT RATES**

Lab. Code §§ 221, 510, 1194, 1197, and 1198

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

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

33. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

**A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT
THE CORRECT RATES OF PAY**

34. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

35. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.



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

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

36. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

37. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

38. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

39. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

40. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

41. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known



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1 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
2 Cal.4th 575, 585.)

3 42. At all relevant times during the applicable limitations period, Defendants failed to
4 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
5 minimum, regular, and overtime wages for all minimum, regular, and overtime hours,
6 respectively, that they worked at the correct rates of pay.

7 43. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
9 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
10 rates of pay as required by California law.

11 **B. UNLAWFUL WAGE DEDUCTIONS**

12 44. Under Labor Code § 221, "It shall be unlawful for any employer to collect or
13 receive from an employee any part of wages theretofore paid by said employer to said employee."
14 The Defendants deducted wages from the wages earned by Lynum and all of the other Class
15 Members for in violation of Labor Code § 221.

16 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
17 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
18 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
19 law.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

22 **Lab. Code §§ 226.7 and 512**

23 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

24 46. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

25 47. At all relevant times during the applicable limitations period, Plaintiff and the
26 Class Members have been employees of Defendants and entitled to the benefits and protections
27 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

28 48. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the
commission shall be the maximum hours of work and the standard conditions of
labor for employees. The employment of any employee for longer hours than those



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fixed by the order or under conditions of labor prohibited by the order is unlawful.

49. In relevant part, In relevant part, California Labor Code § 512 states:

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

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

50. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

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



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1 (b) An employer shall not require an employee to work during
2 a meal or rest period mandated pursuant to an applicable
3 statute, or applicable regulation, standard, or order of the
4 Industrial Welfare Commission, the Occupational Safety
5 and Health Standards Board, or the Division of
6 Occupational Safety and Health.

7 (c) If an employer fails to provide an employee a meal period
8 or rest period in accordance with a state law, including, but
9 not limited to, an applicable statute or applicable
10 regulation, standard, or order of the Industrial Welfare
11 Commission, the Occupational Safety and Health
12 Standards Board, or the Division of Occupational Safety
13 and Health, the employer shall pay the employee one
14 additional hour of pay at the employee's regular rate of
15 compensation for each work day that the meal or rest
16 period is not provided.

17 52. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
18 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
19 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
20 to a second 30-minute meal period when they worked more than 10 hours in a workday.

21 53. Defendants intentionally failed to provide Plaintiff and the Class Members with
22 all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants
23 required Lynum and the other Class Members to remain on the premises at all times and to
24 monitor electronic communication devices at all times, including during meal periods. The
25 Defendants subjected Lynum and the other Class Members to work related interruptions during
26 meal periods. The Defendants did not pay Lynum and the other Class Members for time restricted
27 to the premises on monitoring electronic communication devices during meal periods.

28 54. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
Members with timely meal periods.

55. Plaintiff is informed and believes and thereon alleges that, at all relevant times
within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



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1 which resulted in Defendants not providing the and the Class Members with all off-duty meal
2 periods required by California law.

3 56. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
4 suffered damages in amounts subject to proof to the extent they were not paid additional wages
5 owed for all meal periods not provided to them.

6 57. By reason of the above, Plaintiff and the Class Members are entitled to premium
7 wages for workdays in which one or more meal periods were not provided to them pursuant to
8 California Labor Code § 226.7.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

11 **Lab. Code § 226.7**

12 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

13 58. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

14 59. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class Members have been employees of Defendants and entitled to the benefits and protections
16 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

17 60. In relevant part, California Labor Code § 1198 states:

18 The maximum hours of work and the standard conditions of labor
19 fixed by the commission shall be the maximum hours of work and
20 the standard conditions of labor for employees. The employment
21 of any employee for longer hours than those fixed by the order or
22 under conditions of labor prohibited by the order is unlawful.

23 61. In relevant part, Section 12 of the Wage Order states:

24 **Rest Periods**

25 (A) Every employer shall authorize and permit all employees
26 to take rest periods, which insofar as practicable shall be in the
27 middle of each work period. The authorized rest period time shall
28 be based on the total hours worked daily at the rate of ten (10)
minutes net rest time per four (4) hours or major fraction thereof.
However, a rest period need not be authorized for employees
whose total daily work time is less than three and one-half (3 1/2)
hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.



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

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

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

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

64. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

65. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

66. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the



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1 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
2 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
3 to authorize and permit them to take 10-minute rest periods every four hours worked or major
4 fraction thereof.

5 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
7 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
8 take all rest breaks required by California law.

9 68. Defendants failed to provide Plaintiff with all required rest breaks in accordance
10 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
11 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
12 which resulted in Defendants not providing the Class Members with all rest breaks required by
13 California law.

14 69. Defendants failed to pay Plaintiff the additional wages required by California
15 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
16 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
17 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
18 Class Members with additional wages for all rest breaks not provided to them as required by
19 California Labor Code § 226.7.

20 70. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
21 suffered damages in amounts subject to proof to the extent they were not paid additional wages
22 owed for all rest breaks not provided to them.

23 71. By reason of the above, Plaintiff and the Class Members are entitled to premium
24 wages for workdays in which one or more rest breaks were not provided to them pursuant to
25 California Labor Code § 226.7.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

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

26 72. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

5 75. At all relevant times, Defendants required Plaintiff and the Class Members to incur
6 certain business expenses in the course of performing their duties.

7 76. As described above, the Defendants required Lynum and all of the other Class
8 Members to incur certain business expenses in the course of performing their duties. The
9 Defendants required Lynum and all of the other Class members to supply mobile phones to
10 perform their job duties. However, the Defendants did not provide these items and did not
11 reimburse Lynum and the other Class members for these items.

12 77. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
14 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
15 during the course of performing their duties.

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

18 **Lab. Code § 226**

19 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

20 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE** 21 **STATEMENTS**

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

23 79. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
24 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
25 statement showing:

26 A. Gross wages earned;

27 B. Total hours worked by the employee, except for any employee whose
28 compensation is solely based on a salary and who is exempt from payment of overtime under
subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

C. The number of piece rate units earned and any applicable piece rate if the
employee is paid on a piece-rate basis;



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1 D. All deductions, provided that all deductions made on written orders of the
2 Employee may be aggregated and shown as one item;

3 E. Net wages earned;

4 F. The inclusive dates of the period for which the employee is paid;

5 G. The name of the employee and his or her social security number, except
6 that by January 1, 2008, only the last four digits of his or her social security number or an
7 employee identification number other than a social security number may be shown on the itemized
8 statement;

9 H. The name and address of the legal entity that is the employer; and

10 I. All applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee.

12 80. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
13 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
14 the employer fails to provide accurate and complete information as required by California Labor
15 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
16 alone one or more of the following:

17 A. The amount of the gross wages or net wages paid to the employee during
18 the pay period or any of the other information required to be provided on the itemized wage
19 statement pursuant to California Labor Code § 226(a);

20 B. Which deductions the employer made from gross wages to determine the
21 net wages paid to the employee during the pay period;

22 C. The name and address of the employer and, if the employer is a farm labor
23 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
24 and address of the legal entity that secured the services of the employer during the pay period;

25 D. The name of the employee and only the last four digits of his or her
26 social security number or an employee identification number other than a social security number;
27 and

28 E. The number of piece-rate units earned and the piece rate.

81. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
means a reasonable person would be able to readily ascertain the information without reference
to other documents or information.



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1 82. As alleged herein, at all relevant times during the applicable limitations period,
2 Defendants violated California Labor Code section 226 because they did not properly and
3 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
4 the corresponding number of hours worked at each rate by the employee and other requirements
5 of California Labor Code section 226. Defendants failed to state in the wage statements they
6 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
7 including, but not limited to, regular and overtime wages for work they performed off-the-clock
8 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
9 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
10 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
11 Members that state all minimum wages earned, all regular wages earned, all overtime wages
12 earned, all meal period premium wages earned, all rest break premium wages earned, gross wages
13 earned, net wages earned.

14 83. Defendants' failure to provide Plaintiff and the other Class Members with accurate
15 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
16 the other Class Members with accurate wage statements but intentionally provided wage
17 statements that Defendants knew were not accurate.

18 84. As a result of being provided with inaccurate wage statements by Defendants,
19 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
20 wage statements were violated and they were misled about the amount of wages they had actually
21 earned and were owed. In addition, the absence of accurate information on their wage statements
22 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
23 and mathematical computations to determine the amounts of wages owed, has caused difficulty
24 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
25 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
26 and the other Class Members were not able to ascertain from the wage statements whether
27 Defendants complied with their obligations under California Labor Code section 226(a).

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1 **SIXTH CAUSE OF ACTION**

2 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

3 **(Lab. Code §§ 201, 202, and 203)**

4 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

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

11 88. Labor Code § 202 provides that all earned and unpaid wages of an employee who
12 quits after providing at least 72-hours notice before quitting are due and payable at the time of
13 quitting and that all earned and unpaid wages of an employee who quits without providing at least
14 72-hours notice before quitting are due and payable within 72 hours.

15 89. The Defendants failed to pay Lylum and all of the other Class Members whose
16 employment ended all of the earned but unpaid wages described above by the conclusion of their
17 employment with Lylum, including minimum wages, regular wages, overtime wages,
18 unprovided meal period premium wages, unprovided rest break premium wages. Additionally,
19 the Defendants failed to issue to Lylum and all of the other Class members whose employment
20 ended their final paychecks until the next regular pay day following the termination.

21 90. By failing to pay such earned wages to Plaintiff and the Class Members,
22 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
23 § 201 or § 202.

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

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



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SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

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

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

94. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

95. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

96. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of minimum wages, regular wages, overtime wages, missed meal period premium wages, missed rest period premium wages, phone expenses, and comparable money and property.

97. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

98. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

V. PRAYER FOR RELIEF

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

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

B. An order that Plaintiff be appointed class representative;



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

- 1 C. An order that counsel for Plaintiff be appointed class counsel;
2 D. Unpaid wages, including minimum, regular, overtime, missed meal period,
3 AND missed rest period wages;
4 E. Liquidated damages;
5 F. Statutory penalties, including waiting time penalties;
6 G. Restitution;
7 H. Declaratory relief;
8 I. Actual damages;
9 J. Pre-judgment interest;
10 K. Costs of suit;
11 L. Reasonable attorneys' fees; and
12 M. Such other relief as the Court deems just and proper.

13 **VI. DEMAND FOR JURY TRIAL**

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

16 Respectfully submitted,

17 THE SPIVAK LAW FIRM

18 Dated: September 22, 2023

19 By:

20 

21 DAVID G. SPIVAK, Attorneys for
22 Plaintiff(s), KEVIN LYNUM, and all
23 others similarly situated



25 SPIVAK LAW
26 EMPLOYEE RIGHTS

27 Mail:
28 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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

EXHIBIT 4

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl., PMB 42554
West Hollywood, CA 90069
5 Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485
Attorneys for Plaintiff(s),
7 KEVIN LYNUM, and all others similarly situated
(Additional attorneys for Plaintiff(s) on next page)

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

11 KEVIN LYNUM, on behalf of himself and all
12 others similarly situated, and the general public,
and as an "Aggrieved Employee" on behalf of
13 other "Aggrieved Employees" under the Private
Attorneys General Act of 2004

14 *Plaintiff(s),*

15 vs.

16
17 PROSPECT HOTEL SERVICES, LLC, a
18 Delaware limited liability company; PROSPECT
HOTEL MANAGEMENT LLC, a Delaware
19 limited liability company; and DOES 1-50,
inclusive,

20 *Defendant(s).*

Case No.: 23-CVCV-0012034

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Vacation Pay Forfeiture (Lab. Code § 227.3);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
5. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
6. Wage Statement Penalties (Lab. Code § 226);
7. Waiting Time Penalties (Lab. Code § 203);
8. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
9. Civil Penalties (Lab. Code §§ 2698, et seq.)

JURY TRIAL DEMANDED



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

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

ADDITIONAL ATTORNEY(S) FOR PLAINTIFF(S)

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



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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25th Fl
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1 Plaintiff, Kevin Lylum (hereafter “Plaintiff” or “Lylum”), on behalf of himself and all
2 others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants Prospect Hotel
7 Services, LLC, a Delaware limited liability company, Prospect Hotel Management, LLC, a
8 Delaware limited liability company, and Does 1 through 50, inclusive (collectively
9 “Defendants”).

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

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

15 (B) Provide all meal periods;

16 (C) Authorize and permit all rest breaks;

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

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

19 (F) Indemnify for necessary work-related expenditures;

20 (G) Only deduct wages lawfully;

21 (H) Issue only accurate and complete itemized wage statements;

22 (I) Timely pay wages upon termination of employment;

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

25 **II. THE PARTIES**

26 3. Plaintiff Kevin Lylum is a resident of California. At all relevant times, Plaintiff
27 was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050,
28 and an “aggrieved employee” within the meaning of California Labor Code § 2699(c).

4. Defendant Prospect Hotel Services, LLC is a limited liability company organized
and existing under the laws of Delaware and also a citizen of California based on Plaintiff’s



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information and belief.

5. Defendant Prospect Hotel Management, LLC is a limited liability company organized and existing under the laws of Delaware and also a citizen of California based on Plaintiff's information and belief.

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

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

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

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

III. CLASS ALLEGATIONS

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

11. **Class Definition:** The Class is defined as follows: All persons Defendants



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1 employed in California hourly, non-exempt employees of Defendants in California, including but
2 not limited to housekeepers, individuals performing work comparable to the aforementioned,
3 compensated comparably to the aforementioned, individuals in similar positions, at any time
4 during the period beginning four years prior to the filing of this action and ending on the date that
5 final judgment is entered in this action (“Class” or “Class Members”).

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

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

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

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

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

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

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

25 E. Whether Defendants knowingly and intentionally failed to provide the
26 class with accurate and complete itemized wage statements;

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

G. Whether Defendants engaged in unfair competition within the meaning of
Business and Professions Code sections 17200, et seq., with respect to the Class; and

H. Whether Class Members are entitled to restitution of money or property



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that Defendants may have acquired from them through alleged Labor Code violations.

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

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

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

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

IV. STATEMENT OF FACTS

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

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the



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Commission, and includes, but is not limited to the following:

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

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Lynum, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Lynum, and all of the Class Members, worked for one or more hotels, motels, trailer parks, camps. Accordingly, Lynum and all of the other Class Members are entitled to the protections the Wage Order provides.

20. On approximately May 20, 2023, the Defendants began to employ Lynum in Midpines in the position of hourly, non-exempt housekeeper. The Defendants continuously employed him in that capacity until on or about June 12, 2023 when his employment ended.

21. At all relevant times, the Defendants issued wages to Lynum and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Defendants classified Lynum and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

22. At all relevant times, the Defendants failed to compensate Lynum and all of the



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(213) 725-9094 Tel
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1 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
2 Defendants required Lynum and the other Class Members to remain on the premises at all times
3 and to monitor electronic communication devices at all times, including during breaks and meal
4 periods. The Defendants did not pay Lynum and the other Class Members for time restricted to
5 the premises on monitoring electronic communication devices during meal periods. Defendants
6 also arbitrarily rounded down the records of time worked by Lynum and the other Class Members,
7 denying them regular, minimum and overtime wages they had earned.

8 23. At all relevant times, the Defendants failed to compensate Lynum and all of the
9 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
10 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
11 employed Lynum and the other Class Members in excess of eight hours per day and 40 hours per
12 week. During workdays exceeding eight hours and during workweeks exceeding 40 hours, the
13 Defendants required Lynum and the other Class Members to remain on the premises at all times
14 and to monitor electronic communication devices at all times, including during breaks and meal
15 periods. The Defendants did not pay Lynum and the other Class Members for time restricted to
16 the premises on monitoring electronic communication devices during meal periods.

17 24. At all relevant times, the Defendants failed to provide Lynum and all of the other
18 Class Members with all timely 30-minute, off-duty meal periods. The Defendants required Lynum
19 and the other Class Members to remain on the premises at all times and to monitor electronic
20 communication devices at all times, including during meal periods. The Defendants subjected
21 Lynum and the other Class Members to work related interruptions during meal periods. The
22 Defendants did not pay Lynum and the other Class Members for time restricted to the premises
23 on monitoring electronic communication devices during meal periods. The Defendants also failed
24 to pay premium wages for days on which failed to provide Lynum and all of the other Class
25 Members with meal periods as required by law.

26 25. At all relevant times, the Defendants failed to authorize and permit Lynum and all
27 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
28 or major portion thereof. The Defendants required Lynum and the other Class Members to remain
on the premises at all times and to monitor electronic communication devices at all times,
including during rest breaks. The Defendants subjected Lynum and the other Class Members to
work related interruptions during rest periods. The Defendants also failed to pay premium wages



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1 for days on which failed to authorize and permit Lynum and all of the other Class Members to
2 take rest breaks as required by law.

3 26. At all relevant times, the Defendants required Lynum and all of the other Class
4 Members to incur certain business expenses in the course of performing their duties. The
5 Defendants required Lynum and all of the other Class Members to supply mobile phones to
6 perform their job duties. However, the Defendants did not provide these items and did not
7 reimburse Lynum and the other Class Members for these items.

8 27. At all relevant times, the Defendants unlawfully deducted wages belonging to
9 Lynum and all of the other Class Members by rounding down their hours worked.

10 28. At all relevant times, the Defendants failed to issue to Lynum and all of the other
11 Class Members complete and accurate wage statements that state all hours worked at the correct
12 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
13 the wage statements they issued to Lynum and all of the other Class Members the unpaid wages
14 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
15 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
16 wages earned, gross wages earned, net wages earned, and related information.

17 29. At all relevant times, the Defendants also failed to timely pay Lynum and all of
18 the other Class Members all earned wages as described above during and at the conclusion of
19 employment.

20 30. At all relevant times, the Defendants failed to maintain accurate employee records
21 of Lynum and all of the other Class Members.

22 31. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
23 unlawful practices and policies, Plaintiff and the Class Members were:

- 24 A. Not provided with all off duty meal periods;
- 25 B. Not authorized and permitted to take all rest break periods;
- 26 C. Not paid one hour's pay for each workday in which Defendants failed to
27 authorize and permit them to take one or more timely rest periods;
- 28 D. Not paid one hour's pay for each workday in which Defendants failed to
provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, minimum, regular,
and overtime wages for work performed while clocked out;



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8605 Santa Monica Bl
PMB 42554
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(213) 725-9094 Tel
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1801 Century Park East
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1 F. Not indemnified for all necessary business expenditures incurred during
2 the discharge of their duties;

3 G. Not provided with accurate and complete wage statements; and

4 H. Not timely paid all earned and unpaid wages at the time their employment
5 ended.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE
8 CORRECT RATES**

9 **Lab. Code §§ 221, 510, 1194, 1197, and 1198**

10 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

12 33. At all relevant times, Plaintiff and the Class Members have been non-exempt
13 employees entitled to the protections of both the Labor Code and the Wage Order.

14 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT
15 THE CORRECT RATES OF PAY**

16 34. Section 2 of the Wage Order defines “hours worked” as “the time during which an
17 employee is subject to the control of an employer, and includes all the time the employee is
18 suffered or permitted to work, whether or not required to do so.”

19 35. Section 3 of the Wage Order states:

20 **(A) Daily Overtime - General Provisions**

21 (1) The following overtime provisions are applicable to
22 employees 18 years of age or over and to employees 16 or
23 17 years of age who are not required by law to attend
24 school and are not otherwise prohibited by law from
25 engaging in the subject work. Such employees shall not be
26 employed more than eight (8) hours in any workday or
27 more than 40 hours in any workweek unless the employee
28 receives one and one-half (1 ½) times such employee’s
regular rate of pay for all hours worked over 40 hours in
the workweek. Eight (8) hours of labor constitutes a day’s
work. Employment beyond eight (8) hours in any workday
or more than six (6) days in any workweek is permissible
provided the employee is compensated for such overtime



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8605 Santa Monica Bl
PMB 42554
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(213) 725-9094 Tel
(213) 634-2485 Fax
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1801 Century Park East
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at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

36. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

37. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

38. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

39. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked



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1 during a payroll period.

2 40. Labor Code section 1198 makes it unlawful for an employer to employ an
3 employee under conditions that violate the Wage Order.

4 41. In conjunction, these provisions of the Labor Code require employers to pay non-
5 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
6 worked, including unrecorded hours when the employer knew or reasonably should have known
7 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
8 Cal.4th 575, 585.)

9 42. At all relevant times during the applicable limitations period, Defendants failed to
10 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
11 minimum, regular, and overtime wages for all minimum, regular, and overtime hours,
12 respectively, that they worked at the correct rates of pay.

13 43. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
15 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
16 rates of pay as required by California law.

17 **B. UNLAWFUL WAGE DEDUCTIONS**

18 44. Under Labor Code § 221, "It shall be unlawful for any employer to collect or
19 receive from an employee any part of wages theretofore paid by said employer to said employee."
20 The Defendants deducted wages from the wages earned by Lylum and all of the other Class
21 Members for in violation of Labor Code § 221.

22 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
23 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
24 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
25 law.

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PROVIDE MEAL PERIODS**

28 **Lab. Code §§ 226.7 and 512**

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

46. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.



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Mail:
8605 Santa Monica Bl
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West Hollywood, CA 90069
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(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Fl
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1 47. At all relevant times during the applicable limitations period, Plaintiff and the
2 Class Members have been employees of Defendants and entitled to the benefits and protections
3 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

4 48. In relevant part, California Labor Code § 1198 states:

5 The maximum hours of work and the standard conditions of labor fixed by the
6 commission shall be the maximum hours of work and the standard conditions of
7 labor for employees. The employment of any employee for longer hours than those
8 fixed by the order or under conditions of labor prohibited by the order is unlawful.

9 49. In relevant part, In relevant part, California Labor Code § 512 states:

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

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

22 50. In relevant part, Section 11 of the Wage Order states:

23 **Meal Periods**

24 (A) No employer shall employ any person for a work period of
25 more than five (5) hours without a meal period of not less
26 than 30 minutes, except that when a work period of not
27 more than six (6) hours will complete the day's work the
28 meal period may be waived by mutual consent of the
employee and the employee. Unless the employee is
relieved of all duty during a 30 minute meal period, the
meal period shall be considered an 'on duty' meal period
and counted as time worked. An 'on duty' meal period shall
be permitted only when the nature of the work prevents an
employee from being relieved of all duty and when by
written agreement between the parties an on-the-job paid
meal period is agreed to. The written agreement shall state



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

that the employee may, in writing, revoke the agreement at any time.

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

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

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

52. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

53. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants required Lylum and the other Class Members to remain on the premises at all times and to monitor electronic communication devices at all times, including during meal periods. The Defendants subjected Lylum and the other Class Members to work related interruptions during meal periods. The Defendants did not pay Lylum and the other Class Members for time restricted to the premises on monitoring electronic communication devices during meal periods.



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

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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



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1 Wage Order.

2 65. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
3 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
4 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
5 Plaintiff and the other Class Members to take timely rest periods.

6 66. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
7 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
8 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
9 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
10 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
11 to authorize and permit them to take 10-minute rest periods every four hours worked or major
12 fraction thereof.

13 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times
14 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
15 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
16 take all rest breaks required by California law.

17 68. Defendants failed to provide Plaintiff with all required rest breaks in accordance
18 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
19 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
20 which resulted in Defendants not providing the Class Members with all rest breaks required by
21 California law.

22 69. Defendants failed to pay Plaintiff the additional wages required by California
23 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
24 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
25 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
26 Class Members with additional wages for all rest breaks not provided to them as required by
27 California Labor Code § 226.7.

28 70. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
suffered damages in amounts subject to proof to the extent they were not paid additional wages
owed for all rest breaks not provided to them.

71. By reason of the above, Plaintiff and the Class Members are entitled to premium



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1 wages for workdays in which one or more rest breaks were not provided to them pursuant to
2 California Labor Code § 226.7.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO INDEMNIFY**

5 **Lab. Code § 2802**

6 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

7 72. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

13 75. At all relevant times, Defendants required Plaintiff and the Class Members to incur
14 certain business expenses in the course of performing their duties.

15 76. As described above, the Defendants required Lylum and all of the other Class
16 Members to incur certain business expenses in the course of performing their duties. The
17 Defendants required Lylum and all of the other Class members to supply mobile phones to
18 perform their job duties. However, the Defendants did not provide these items and did not
19 reimburse Lylum and the other Class members for these items.

20 77. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
21 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
22 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
23 during the course of performing their duties.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

26 **Lab. Code § 226**

27 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

28 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS**

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



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1 79. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
2 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
3 statement showing:

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

21 80. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
22 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
23 the employer fails to provide accurate and complete information as required by California Labor
24 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
25 alone one or more of the following:

- 26 A. The amount of the gross wages or net wages paid to the employee during
27 the pay period or any of the other information required to be provided on the itemized wage
28 statement pursuant to California Labor Code § 226(a);
- B. Which deductions the employer made from gross wages to determine the
net wages paid to the employee during the pay period;
- C. The name and address of the employer and, if the employer is a farm labor



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1 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
2 and address of the legal entity that secured the services of the employer during the pay period;

3 D. The name of the employee and only the last four digits of his or her
4 social security number or an employee identification number other than a social security number;
5 and

6 E. The number of piece-rate units earned and the piece rate.

7 81. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
8 means a reasonable person would be able to readily ascertain the information without reference
9 to other documents or information.

10 82. As alleged herein, at all relevant times during the applicable limitations period,
11 Defendants violated California Labor Code section 226 because they did not properly and
12 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
13 the corresponding number of hours worked at each rate by the employee and other requirements
14 of California Labor Code section 226. Defendants failed to state in the wage statements they
15 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
16 including, but not limited to, regular and overtime wages for work they performed off-the-clock
17 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
18 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
19 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
20 Members that state all minimum wages earned, all regular wages earned, all overtime wages
21 earned, all meal period premium wages earned, all rest break premium wages earned, gross wages
22 earned, net wages earned.

23 83. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
24 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
25 the other Class Members with accurate wage statements but intentionally provided wage
26 statements that Defendants knew were not accurate.

27 84. As a result of being provided with inaccurate wage statements by Defendants,
28 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
wage statements were violated and they were misled about the amount of wages they had actually
earned and were owed. In addition, the absence of accurate information on their wage statements
prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery



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1 and mathematical computations to determine the amounts of wages owed, has caused difficulty
2 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
3 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
4 and the other Class Members were not able to ascertain from the wage statements whether
5 Defendants complied with their obligations under California Labor Code section 226(a).

6 **SIXTH CAUSE OF ACTION**

7 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

8 **(Lab. Code §§ 201, 202, and 203)**

9 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

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

16 88. Labor Code § 202 provides that all earned and unpaid wages of an employee who
17 quits after providing at least 72-hours notice before quitting are due and payable at the time of
18 quitting and that all earned and unpaid wages of an employee who quits without providing at least
19 72-hours notice before quitting are due and payable within 72 hours.

20 89. The Defendants failed to pay Lylum and all of the other Class Members whose
21 employment ended all of the earned but unpaid wages described above by the conclusion of their
22 employment with Lylum, including minimum wages, regular wages, overtime wages,
23 unprovided meal period premium wages, unprovided rest break premium wages. Additionally,
24 the Defendants failed to issue to Lylum and all of the other Class members whose employment
25 ended their final paychecks until the next regular pay day following the termination.

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

91. 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



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1 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
2 they have had the ability to comply with those legal requirements.

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

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

9 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

11 94. At all relevant times during the applicable limitations period, Plaintiff and the
12 Class Members have been employees of Defendants and entitled to the benefits and protections
13 of the Business and Professions Code §§ 17200, *et seq.*

14 95. The unlawful conduct of Defendants alleged herein amount to and constitutes
15 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
16 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
17 gained a competitive advantage over other comparable companies doing business in California
18 that comply with their legal obligations to compensate employees for all earned wages.

19 96. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
20 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
21 Members were deprived of minimum wages, regular wages, overtime wages, missed meal period
22 premium wages, missed rest period premium wages, phone expenses, and comparable money and
23 property.

24 97. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
25 Class Members are entitled to restitution of all monies rightfully belonging to them that
26 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
27 practices.

28 98. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
connection with their unfair competition claims pursuant to California Code of Civil Procedure §
1021.5, the substantial benefit doctrine and/or the common fund doctrine.

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EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab Code §§2698, *et seq.*)

(By Plaintiff and the Aggrieved Employees against all Defendants)

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

100. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning September 25, 2022 and ending on the date that final judgment is entered in this action.

101. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

101. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

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

Every person employing labor in this state shall



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...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

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

103. Labor Code section 1174.5 states:

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

104. Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee, including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.



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(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

105. Defendants failed to compensate Plaintiff and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, gross wages earned, net wages earned, and related compensation. As a result, Defendants have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Plaintiff and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

106. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802.

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

108. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 221, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation (if found to be neither willful



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nor intentional) and \$200 for each aggrieved employee for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalty amount set by California Labor Code § 225.5).

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

D. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

E. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

F. For violations of California Labor Code § 1174, \$500 for Each Aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5).

G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

109. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated September 25, 2023, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the notice to the LWDA dated September 25, 2023 is attached as **Exhibit A**.



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1 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
2 failed to take action in response within 65 calendar days of the date of Plaintiff's notice, but
3 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
4 does not intend to investigate these allegations.

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

8 **V. PRAYER FOR RELIEF**

9 111. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
10 relief and judgment against Defendants as follows:

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

13 B. An order that Plaintiff be appointed class representative;

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

15 D. Unpaid wages, including minimum, regular, overtime, missed meal period,
16 AND missed rest period wages;

17 E. Liquidated damages;

18 F. Statutory penalties, including waiting time penalties;

19 G. Civil penalties;

20 H. Restitution;

21 I. Declaratory relief;

22 J. Actual damages;

23 K. Pre-judgment interest;

24 L. Costs of suit;

25 M. Reasonable attorneys' fees; and

26 N. Such other relief as the Court deems just and proper.

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Respectfully submitted,

[Handwritten signature]

By:

DAVID G. SPIVAK, Attorneys for
Plaintiff(s), KEVIN LYNUM, and all
others similarly situated



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

EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069

1801 Century Park East 25th Fl Los Angeles CA 90067

(213) 725-9094

(213) 634-2485

spivaklaw.com

Mail

Office

Tel

Fax

Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 25, 2023

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

Re: Kevin Lynum / Prospect Hotel Services

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Kevin Lynum (hereafter “Lynum” or “Complainant”) provides notice that Prospect Hotel Services, LLC, a Delaware limited liability company, Prospect Hotel Management, LLC, a Delaware limited liability company and related entities (collectively “the Prospect Hotel Services Employers” or “the Employers”) violated his rights and those of all other individuals the Prospect Hotel Services Employers have employed or otherwise contracted with in California as hourly, non-exempt employees of Prospect Hotel Services Employers in California, including but not limited to housekeepers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Lynum hereby provides this notice to the Labor & Workforce Development Agency and the Prospect Hotel Services Employers and their agents and representatives.

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

Statement of Facts

On approximately May 20, 2023, the Prospect Hotel Services Employers began to employ Lynum in Midpines in the position of hourly, non-exempt housekeeper. The Prospect Hotel Services Employers continuously employed him in that capacity until on or about June 12, 2023 when his employment ended.

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

The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Prospect Hotel Services Employers employed Lynum and the other Aggrieved Employees in excess of eight hours per day and 40 hours per week. During workdays exceeding eight hours and during workweeks exceeding 40 hours, the Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Prospect Hotel Services Employers employed Lynum and the other Aggrieved Employees in excess of 12 hours per day. During workdays exceeding 12 hours, the Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

At all relevant times, the Prospect Hotel Services Employers failed to provide Lynum and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during meal periods. The Prospect Hotel Services Employers subjected Lynum and the other Aggrieved Employees to work related interruptions during meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods. The Prospect Hotel Services Employers also failed to pay premium wages for days on which they failed to provide Lynum and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Prospect Hotel Services Employers failed to authorize and permit Lynum and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during rest breaks. The Prospect Hotel Services Employers subjected Lynum and the other Aggrieved Employees to work related interruptions during rest breaks. The Prospect Hotel Services Employers also failed to pay premium wages for days on which they failed to authorize and permit Lynum and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Prospect Hotel Services Employers required Lynum and all of the other Aggrieved Employees to incur certain business expenses in the course of

performing their duties. The Prospect Hotel Services Employers required Lynum and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Prospect Hotel Services Employers did not provide these items and did not reimburse Lynum and the other Aggrieved Employees for these items.

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

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

The Prospect Hotel Services Employers failed to maintain accurate employee records of Lynum and all of the other Aggrieved Employees.

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

- (a) The Prospect Hotel Services Employers failed to pay Lynum and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Prospect Hotel Services Employers failed to provide Lynum and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Prospect Hotel Services Employers failed to authorize and permit Lynum and all of the other Aggrieved Employees to take rest breaks in compliance with California law;

- (d) The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees at one hour's pay for each day in which the Prospect Hotel Services Employers failed to provide them with one or more meal periods as required by law;
- (e) The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees at one hour's pay for each day in which the Prospect Hotel Services Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Prospect Hotel Services Employers failed to indemnify Lynum and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Prospect Hotel Services Employers unlawfully deducted wages belonging to Lynum and all of the other Aggrieved Employees;
- (h) The Prospect Hotel Services Employers knowingly and intentionally failed to provide Lynum and all of the other Aggrieved Employees with accurate wage statements;
- (i) The Prospect Hotel Services Employers willfully failed to timely pay Lynum and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Prospect Hotel Services Employers and when their employment ended; and
- (j) The Prospect Hotel Services Employers failed to maintain accurate employment records pertaining to Lynum and all of the other Aggrieved Employees.

Accordingly, Lynum now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Prospect Hotel Services Employers' alleged violations of the Labor Code and the Wage Order.

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The Wage Order

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

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

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

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Prospect Hotel Services Employers, Lynum, and all of the Aggrieved Employees were covered by the Wage Order because the Prospect Hotel Services Employers operated, and Lynum, and all of the Aggrieved Employees, worked for one or more hotels, motels, trailer parks, and camps. Accordingly, Lynum and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

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

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching

out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

The Prospect Hotel Services Employers employed Lynum and the other Aggrieved Employees in excess of eight hours per day and 40 hours per week. During workdays exceeding eight hours and during workweeks exceeding 40 hours, the Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

The Prospect Hotel Services Employers employed Lynum and the other Aggrieved Employees in excess of 12 hours per day. During workdays exceeding 12 hours, the Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during breaks and meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Prospect Hotel

Services Employers, Lynum and all of the other Aggrieved Employees earned during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Prospect Hotel Services Employers failed to pay to Lynum and all of the other Aggrieved Employees overtime and double time premium pay on such , and other non-discretionary compensation.

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

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. . . .

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Prospect Hotel Services Employers failed to provide Lynum and all of the other Aggrieved Employees with all timely meal periods. The Prospect Hotel Services Employers denied Lynum and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during meal periods. The Prospect Hotel Services Employers did not pay Lynum and the other Aggrieved Employees for time restricted to the premises on monitoring electronic communication devices during meal periods. Furthermore, the Prospect Hotel Services Employers failed to pay premium wages for days on which they failed to provide Lynum and all of the other Aggrieved Employees with timely

meal periods. Accordingly, Lynum now seeks civil penalties for these Labor Code violations that the Prospect Hotel Services Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of

each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

In addition, Labor Code section 226.7 states:

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

The Prospect Hotel Services Employers failed to authorize and permit Lynum and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Prospect Hotel Services Employers did not seek an exemption from the rest period protections of the Wage Order from

the California Division of Labor Standards Enforcement. The Prospect Hotel Services Employers required Lynum and the other Aggrieved Employees to remain on the premises at all times and to monitor electronic communication devices at all times, including during rest breaks. Moreover, the Prospect Hotel Services Employers failed to pay Lynum and all of the other Aggrieved Employees premium wages on workdays the Prospect Hotel Services Employers failed to provide Lynum and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Lynum now seeks civil penalties for these Labor Code violations that the Prospect Hotel Services Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

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

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

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

Wage Order, § 9(B).

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

As described above, the Prospect Hotel Services Employers required Lynum and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Prospect Hotel Services Employers required Lynum and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Prospect Hotel Services Employers did not provide these items and did not reimburse Lynum and the other Aggrieved Employees for these items. Accordingly, Lynum seeks civil penalties for these Labor Code violations that the Prospect Hotel Services Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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

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

At all relevant times during the applicable limitations period, the Prospect Hotel Services Employers violated Labor Code section 226 because they did not properly and

accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Prospect Hotel Services Employers failed to state in the wage statements they issued to Lynum and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Prospect Hotel Services Employers knowingly and intentionally failed to state on the wage statements they issued to Lynum and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, gross wages earned, net wages earned, and other required information.

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

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

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

The Prospect Hotel Services Employers failed to compensate Lynum and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the

Prospect Hotel Services Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Lynum now seeks civil penalties for the Labor Code violations that the Prospect Hotel Services Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 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 Prospect Hotel Services Employers failed to pay Lynum and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Lynum, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. Additionally, the Prospect Hotel Services Employers failed to issue to Lynum and all of the other Aggrieved Employees whose employment ended their final paychecks until the next

regular pay day following the termination. By failing to pay Lynum and all of the other Aggrieved Employees as set forth above at the end of employment, the Prospect Hotel Services Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Lynum seeks civil penalties from the Prospect Hotel Services Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the

number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

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

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

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Kevin Lynum will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a

LWDA / The Prospect Hotel Services Employers
Re: Kevin Lynum
September 25, 2023
Page 23 of 23

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

Sincerely,



Caroline Tahmassian, Esq.
caroline@spivaklaw.com

cc: Kevin Lynum

Mr. Walter L. Haines Esq.
United Employees Law Group
8605 Santa Monica Bl.
PMB 63354
West Hollywood, CA 90069
walter@uelglaw.com

Prospect Hotel Services, LLC
c/o Mr. Robert B. Forouzandeh Esq.
Reicker, Pfau, Pyle & McRoy, LLP
1421 State Street
Suite B
Santa Barbara, CA 93101
rforouzandeh@rppmh.com

Prospect Hotel Management, LLC
c/o Mr. Robert B. Forouzandeh Esq.
Reicker, Pfau, Pyle & McRoy, LLP
1421 State Street
Suite B
Santa Barbara, CA 93101
rforouzandeh@rppmh.com

State of California,
County of Los Angeles

2. 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.

Robert B. Forouzandeh, Esq.
Nolan O'Malley
Reicker, Pfau, Pyle McRoy, LLP
1421 State Street, Suite B
Santa Barbara, CA 93101
rforounzandeh@rppmh.com
nomalley@rppmh.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 nora@spivaklaw.com.

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

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

THE
SPIVAK
LAW FIRM

EXHIBIT 5

1 **REICKER, PFAU, PYLE & McROY LLP**
1421 State Street, Suite B
2 Santa Barbara, CA 93101
Tel (805) 966-2440
3 Fax (805) 966-3320
Robert B. Forouzandeh (State Bar No. 247177)
4 rforouzandeh@rppmh.com

5 Attorney for Defendants Prospect Hotel Services, LLC; and
6 Prospect Hotel Management, LLC

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

10
11 KEVIN LYNUM, on behalf of himself and all
other similarly situated, and the general public,

12 Plaintiffs,

13 v.

14 PROSPECT HOTEL SERVICES, LLC, a Delaware
limited liability company; PROSPET HOTEL
15 MANAGEMENT, LLC, a Delaware limited liability
company; and DOES 1-50, inclusive ,

16 Defendants.
17
18

Case No.: 23-CVCV-0012034

**ANSWER TO FIRST AMENDED
COMPLAINT**

Complaint Filed: September 25, 2023
First Amended Complaint Filed: December 4,
2023

19
20
21 **TO THE COURT, PLAINTIFF, AND PLAINTIFF'S ATTORNEY OF RECORD:**

22 Defendants Prospect Hotel Services, LLC and Prospect Hotel Management, LLC (also
23 referred to herein as "**Defendants**") hereby answer Plaintiff's First Amended Complaint ("**FAC**")
24 filed by Kevin Lynam ("**Plaintiff**").

25 **GENERAL DENIAL**

26 Pursuant to California Code of Civil Procedure § 431.30(d), Defendants deny generally and
27 specifically each and every allegation contained in Plaintiff's FAC, and deny further that Plaintiff has
28 been injured in the amount or manner alleged or in any other manner whatsoever. Without waiving or

1 excusing Plaintiff's own, and respective, burdens of proof and production of evidence, Defendants
2 further allege, as for its affirmative defenses to all causes of action asserted against it in the FAC by
3 Plaintiff, as follows:

4 **AFFIRMATIVE DEFENSES**

5 As separate and affirmative defenses to the FAC and each cause of action, claim, and
6 allegation contained therein, Defendants allege as follows:

7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to State Cause of Action)**

9 1. As a first separate and distinct affirmative defense, and without admitting any privity,
10 relationship, or valid allegations of the FAC against the answering Defendants, each purported cause
11 of action alleged in the FAC fails to state facts sufficient to constitute a cause of action against
12 Defendants upon which relief can be granted. Defendants have reason to believe that Plaintiff's
13 claims are unsubstantiated, false, baseless, and in some cases time-barred.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Statute of Limitations)**

16 2. The FAC, each purported cause of action alleged therein, and the elements of relief sought
17 therein are barred, in whole or in part, by one or more statutes of limitation including, but not limited
18 to, Code of Civil Procedure §§ 338 and 340, Labor Code §§ 203, 226 and Business and Professions
19 Code § 17208.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Waiver)**

22 3. The FAC, and each purported cause of action alleged therein, is barred on the ground that
23 Plaintiff has expressly and/or impliedly waived the right to assert such causes of action by virtue of
24 his verbal and/or written expressions or conduct.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Estoppel)**

27 4. By virtue of his conduct, Plaintiff must be estopped from asserting any of the causes of action
28 in the FAC against Defendants.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 5. Defendants are informed and believe and thereon allege that Plaintiff, by his own conduct, is
4 guilty of unclean hands, which completely bars or reduces recovery, if any, to which he may be
5 entitled, all in accordance with proof at trial. Defendants have reason to believe that Plaintiff's claims
6 are unsubstantiated, false, baseless, and in some cases time-barred. Plaintiff's self-serving
7 assessment and allegations are not based on corroborating facts and logical conclusions.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 **(Justification and Privilege)**

10 6. The FAC, and each purported cause of action alleged therein is barred because Defendants'
11 actions, conduct, and/or dealings with its employees were lawful, and were carried out in good faith
12 and for a legitimate business purpose.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 **(Misrepresentation)**

15 7. The FAC, and each purported cause of action alleged therein, is barred in whole or in part by
16 misrepresentations made by Plaintiff.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 **(Setoff, Offset, and/or Recoupment)**

19 8. Some of all of the purported causes of action in the FAC are subject to setoff, offset, and/or
20 recoupment.

21 **NINTH AFFIRMATIVE DEFENSE**

22 **(Balancing of Hardships)**

23 9. Plaintiff is not entitled to injunctive or declaratory relief because the benefit of such relief, if
24 any, is slight compared to the harm Defendants will suffer if injunctive or declaratory relief is
25 permitted.

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1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(Good Faith)**

3 15. All actions taken by Defendants with respect to Plaintiff, at all times relevant to this action,
4 were taken in good faith for legitimate non-discriminatory reasons.

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 **(Failure to Mitigate)**

7 16. Plaintiff's claims are barred in whole or in part, because Plaintiff has failed to act reasonably
8 to mitigate his alleged damages.

9 **SEVENTEENTH AFFIRMATIVE DEFENSE**

10 **(Legitimate Business Reason)**

11 17. The FAC, and each purported cause of action contained therein, is barred because Defendants
12 had legitimate business reasons for taking certain employment action. The FAC, and each purported
13 cause of action contained therein, is barred because the alleged conduct, if true, would be an essential
14 lawful part of Defendants' business operations and/or consistent with industry practice.

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

16 **(No Injury by Wage Statements)**

17 18. Plaintiff is not entitled to any penalties pursuant to California Labor Code § 226(e) because,
18 with regard to each wage statement issued to Plaintiff by Defendants, Plaintiff could promptly and
19 easily determine from the wage statement all of the information set forth in California Labor Code §
20 226(e)(2)(B)(i) through (iii).

21 **NINETEENTH AFFIRMATIVE DEFENSE**

22 **(Meal and Rest Breaks Provided)**

23 19. Plaintiff's claims for missed meal and rest periods are barred because Defendants provided
24 meal and rest periods to Plaintiff in the manner permitted by applicable law and did not deny or
25 prevent Plaintiff the opportunity to take meal and rest periods.

26 ///

27 ///

28 ///

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 **(Failure to Show Intent of Willfulness)**

3 20. Plaintiff's claims for penalties, including, but not limited to penalties under California Labor
4 Code Sections 203 are barred in whole or in part, because Plaintiff has not alleged, and cannot allege,
5 facts demonstrating, that Defendants' conduct was willful, intentional, or harmful. Defendants
6 engaged in lawful conduct that was with cause and justification, and Defendants are not liable for any
7 purported injuries or claims which Plaintiff now declares. The FAC, and each purported cause of
8 action contained therein, is barred because Defendants had legitimate business reasons, which were
9 not a pretext for retaliation, for taking certain employment action. Defendants maintain that the
10 alleged conduct, if true, would be an essential lawful part of its business operations and/or consistent
11 with industry practice.

12 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

13 **(Improper Class Representative)**

14 21. Without admitting the substance of any allegations made in the FAC, Defendants are
15 informed and believe and thereon allege that this action is not suitable for certification as a class
16 action because Plaintiff's claims are not typical of the claims of purported class members and/or
17 because Plaintiff is not an appropriate class representative.

18 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

19 **(Lack of Commonality)**

20 22. Without admitting any of the substantive allegations of the FAC, Defendants are informed and
21 believe and thereon allege that this action is not suitable for certification as a class action because
22 common issues of fact and law pertaining to the purported class do not predominate over issues
23 allegedly pertaining to Plaintiff.

24 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

25 **(Lack of Numerosity)**

26 23. Without admitting any of the substantive allegations of the FAC, or that Defendants are
27 proper defendants in this action, Defendants are informed and believe and thereon allege that this
28 action is not suitable for certification as a class action because the purported class is not sufficiently

1 numerous.

2 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

3 **(Electronic Devices Provided)**

4 24. Plaintiff's claims for failure to reimburse for use of personal electronic devices are barred
5 because Defendants provided electronic devices to Plaintiff in the manner permitted by applicable
6 law and did not deny or prevent Plaintiff the opportunity to utilize an employer provided electronic
7 device or require Plaintiff to use his own personal electronic device.

8 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

9 **(Time Card Rounding Benefited Plaintiff)**

10 25. Plaintiff's claims for time card rounding are barred because any time card rounding performed
11 by Defendants resulted in Plaintiff receiving equal to or more credit for time worked than Plaintiff
12 actually worked.

13 **PRAYER**

14 WHEREFORE, Defendants pray for judgment on the First Amended Complaint as follows:

- 15 1. That the Court deny Plaintiff's request to certify this action as a class action;
16 2. That Plaintiff take nothing by way of the First Amended Complaint;
17 3. That the First Amended Complaint be dismissed with prejudice;
18 4. That the Court enter judgment for Defendants and against Plaintiff, on all alleged
19 causes of action;
20 5. That the Court award Defendants their costs of suit; and
21 6. That the Court grant Defendants such other and further relief as the Court deems just
22 and proper.

23
24 Dated: February 9, 2024

REICKER, PFAU, PYLE & McROY LLP

25
26 By 
27 Robert B. Forouzandeh
28 Attorneys for Defendants

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EXHIBIT 6

Confidential Settlement Communication

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

Case title:	Kevin Lynum v. Prospect Hotel Management, LLC, et al.
Case no.:	23-CVCV-0012034
Court:	Mariposa
Judge:	The Honorable Anita Bryant, Dept. 03
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Thursday, September 26, 2019
Lab.Code § 203 (waiting time penalties) period begins:	Friday, September 25, 2020
Lab.Code § 2699 (civil penalties) period begins:	Sunday, September 25, 2022
Lab.Code § 226 (pay stub penalties) period begins:	Sunday, September 25, 2022
LWDA Notice:	Monday, September 25, 2023
Lawsuit:	Monday, September 25, 2023
Sample begin:	Wednesday, September 25, 2019
Sample end:	Sunday, June 2, 2024
Sample calendar days:	1,712
Mediation:	Monday, July 8, 2024
Anticipated Settlement Period end date:	Tuesday, November 5, 2024
Settlement Period to Sample Period:	109.05%

Classes / Groups sizes

UCL Class Members:	267
UCL Workweeks:	14,283
UCL Wage Statements:	7,142
UCL Workdays:	59,989
UCL Calendar days:	1,747
UCL Months:	57.44
Waiting Time Penalties Class Members:	193
PAGA Aggrieved Employees:	139
PAGA Wage Statements:	3,000
Wage Statement Class Members:	139
Wage Statement Class Wage Statements:	3,000

Averages

Average Hourly Rate:	\$	19.01
Average Overtime Rate:	\$	28.52
Average Doubletime Rate:	\$	38.02
Average Work Hours Per Day:		7.50
Average Work Hours Per Week:		31.50
Average Workdays Per Week:		4.20
Workdays to Calendar Days (%):		60.00%
Paycycle:	biweekly (26 paychecks/year)	
Paychecks Per Year:		26

Confidential Settlement Communication

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Case title:	Kevin Lynam v. AutoCamp Yosemite
Case no.:	23-CVCV-0012034
Court:	Mariposa
Judge:	The Honorable Anita Bryant, Dept. 03
Page subject:	Unpaid OTC wages
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	\$	19.01
Unpaid hours per pay week during off-the-clock meal periods:		2.10
Actionable workweeks:		14,283
Interest:		10%
Unpaid off-the-clock wages:	\$	627,210.81
Liquidated damages:	\$	627,210.81

Confidential Settlement Communication

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Case title:	Kevin Lynam v. Prospect Hotel Management, LLC, et al.
Case no.:	23-CVCV-0012034
Court:	Mariposa
Judge:	The Honorable Anita Bryant, Dept. 03
Page subject:	Unpaid Wages Due To Rounding

Average Hourly Rate:	\$	19.01
Unpaid rounded hours per shift (5.8 minutes per shift):	\$	0.10
UCL Workdays:		59,988.60
% or shifts with unfavorable rounding		37.50%
Interest rate:		10%
Unpaid wages due to rounding:	\$	45,472.78

Confidential Settlement Communication

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Case title:	Kevin Lynam v. Prospect Hotel Management, LLC, et al.
Case no.:	23-CVCV-0012034
Court:	Mariposa
Judge:	The Honorable Anita Bryant, Dept. 03
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198

Average Hourly Rate:	\$	19.01
Actionable workdays:		59,989
>>Percentage qualifying for meal periods:		91.45%
Violation rate (%)		100%
Paid Missed Meal Premium Hours		6,455.00
Meal period premium wages:	\$	1,042,880.52
Paid Premeium wages:	\$	122,709.55
Unpaid Meal Period Premium Wages:	\$	920,170.97

Confidential Settlement Communication

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Case title:	Kevin Lynum v. Prospect Hotel Management, LLC, et al.
Case no.:	23-CVCV-0012034
Court:	Mariposa
Judge:	The Honorable Anita Bryant, Dept. 03
Page subject:	Unprovided Rest Periods
Authority:	Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	\$	19.01
Actionable workdays:		59,989
>>Percentage qualifying for rest periods:		96.55%
Violation rate (%)		100%

Rest period premium wages:	\$	1,101,040.06
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Confidential Settlement Communication

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Case title:	Kevin Lynam v. Prospect Hotel Management, LLC, et al.
Case no.:	23-CVCV-0012034
Court:	Mariposa
Judge:	The Honorable Anita Bryant, Dept. 03
Page subject:	Unreimbursed cellphone expenses
Authority:	Lab.Code § 2802

Cellphone

UCL Wage Statements:		7,142
Average Cellphone Cost Per Paycheck:	\$	15.00
Interest rate:		10%
Unreimbursed cellphone costs:	\$	117,834.75

Confidential Settlement Communication

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Case title:	Kevin Lynum v. Prospect Hotel Management, LLC, et al.
Case no.:	23-CVCV-0012034
Court:	Mariposa
Judge:	The Honorable Anita Bryant, Dept. 03
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226

Wage Statement Class Members:	139
Wage Statement Class Wage Statements:	3,000
Initial penalty:	\$ 50.00
Subsequent penalty:	\$ 100.00
Statutory wage statement penalties:	\$ 293,050.00

Confidential Settlement Communication

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Case title:	Kevin Lynum v. Prospect Hotel Management, LLC, et al.
Case no.:	23-CVCV-0012034
Court:	Mariposa
Judge:	The Honorable Anita Bryant, Dept. 03
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		193
Days waiting:		30
Average Hourly Rate:	\$	19.01
Average Overtime Rate:	\$	28.52
Average Doubletime Rate:	\$	38.02
Average Work Hours Per Day:		7.50
Regular Hours Per Day:		7.50
Overtime Hours Per Day:		-
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	825,509.25

Confidential Settlement Communication

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Case title:	Kevin Lynum v. Prospect Hotel Management, LLC, et al.
Case no.:	23-CVCV-0012034
Court:	Mariposa
Judge:	The Honorable Anita Bryant, Dept. 03
Page subject:	PAGA Civil Penalties
Authority:	Lab.Code §§ 2698, <i>et seq.</i>

Labor Code violation	Labor Code Civil		Subsequent		Pay periods		Total
	Penalty Statute	Initial penalty	penalty				
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00		3,000	\$	300,000.00
Overtime/M meal periods (Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00		3,000	\$	150,000.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00		3,000	\$	300,000.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00		3,000	\$	300,000.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 100.00	\$ 200.00		3,000	\$	300,000.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00		3,000	\$	300,000.00
Total:						\$	1,650,000.00

Confidential Settlement Communication

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

Case title:	Kevin Lynum v. Prospect Hotel Management, LLC, et al.
Case no.:	23-CVCV-0012034
Court:	Mariposa
Judge:	The Honorable Anita Bryant, Dept. 03
Page subject:	Totals
Authority:	Various

Restitution

Unpaid off-the-clock wages:	\$	627,210.81
Liquidated damages:	\$	627,210.81
Unpaid wages due to rounding:	\$	45,472.78
Unpaid Meal Period Premium Wages:	\$	920,170.97
Rest period premium wages:	\$	1,101,040.06
Unreimbursed cellphone costs:	\$	117,834.75
Restitution subtotal:	\$	3,438,940.18

Penalties

Statutory wage statement penalties:	\$	293,050.00
Waiting time penalties:	\$	825,509.25
Minimum wages (Lab.Code § 1197):civil penalties:	\$	300,000.00
Overtime/Meal periods Lab.Code § 512):civil penalties:	\$	150,000.00
Rest periods (Lab.Code § 1198):civil penalties:	\$	300,000.00
Business expenses (Lab.Code § 2802):civil penalties:	\$	300,000.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$	300,000.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$	300,000.00
Penalties subtotal:	\$	2,768,559.25

Grand total:	\$	6,207,499.43
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EXHIBIT 7

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

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
10 (UNLIMITED JURISDICTION)

11 ALINA GHRDILYAN; EVGENIA
12 SULTANIAN; and all others similarly situated,

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

16 RJ FINANCIAL, INC., a California
17 corporation; RAMIL ABALKHAD, an
18 individual; and DOES 1 through 50, inclusive,

19 *Defendants.*

Action filed: 01/28/2010
CMC: 05/10/2010, 8:30 a.m.
FSC: Not set
Trial: Not set
Dept: 36, Hon. Gregory Alarcon

26 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
27 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.

1 226.7 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 8

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

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

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

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

19 IT READS NOW, (READING:)

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

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

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

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 9



July 24, 2024

CASE ASSUMPTIONS

Class Members	267
Opt Out Rate	1%
Opt Outs Received	7
Total Class Claimants	260
Subtotal Admin Only	\$7,438.15

Flat Fee Total \$7,000.00

For 267 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Case: Lylum v. AutoCamp Yosemite, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Nora Greer
Firm: The Spivak Law Firm
Contact Number: (818) 582-3073
Email: nora@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly. Estimate is based on **267** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

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

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	1	\$100.00
Programming Database & Setup	\$100.00	1	\$100.00
Toll Free Setup*	\$100.00	1	\$100.00
Call Center & Long Distance	\$2.00	28	\$56.00
NCOA (USPS)	\$45.00	1	\$45.00
Total			\$401.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Language Translation	\$800.00	1	\$1,000.00
Data Merge & Duplication Scrub	\$0.10	267	\$26.70
Notice Packet & Opt-Out Form	\$1.20	267	\$320.40
Estimated Postage (up to 2 oz.)*	\$0.87	267	\$232.29
Static Website	\$200.00	1	\$200.00
Total			\$1,979.39

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	31		\$31.00
Remail Notice Packets	\$1.00	28		\$28.00
Estimated Postage	\$0.87	28		\$24.36
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$293.36

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Deficiency & Dispute Letters	\$10.00	7		\$70.00
Case Manager	\$85.00	2		\$170.00
			Total	\$810.00

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

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	2		\$270.00
Mail Class Checks *	\$0.85	260		\$221.00
Estimated Postage	\$0.64	260		\$166.40
			Total	\$1,252.40

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	31		\$62.00
Case Associate	\$55.00	2		\$110.00
Reconcile Uncashed Checks	\$85.00	3		\$255.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Total				\$2,702.00

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

Estimate Total: \$7,438.15



TERMS AND CONDITIONS

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

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

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

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

Tax Reporting Requirements

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

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

EXHIBIT 10



Reference No. 20240722-PJI-05

July 20, 2024

Nora Greer
The Spivak Law Firm
1801 Century Park East 25th Fl
Los Angeles CA 90067

RE: *Lynum v. AutoCamp Yosemite*

Dear Nora,

Thank you for this opportunity to provide a quote for your above-captioned settlement. Using the parameters you described, Simpluris' total estimated cost is \$11,847. As a courtesy, we are offering a \$2,847 discount, for a discounted total of \$9,000.

Please let me know if you have questions. I look forward to this opportunity to work together.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Patrick J. Ivie". The signature is stylized with a large "P" and "I".

PATRICK J. IVIE
Chief Revenue Officer

m: 310-995-6455
o: 714-975-5260
e: pivie@simpluris.com



3194-C Airport Loop Drive, Costa Mesa, CA 92626
www.simpluris.com | 1 (800) 779 - 2104

Estimate Number:	20240722-PJI-05	Prepared By:	Patrick J. Ivie
Estimate Date:	7/22/2024	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	10/20/2024	Email:	pivie@simpluris.com

Primary Contact
Attorney: **Nora Greer**
Firm: The Spivak Law Firm
Email: nora@spivaklaw.com

Opposing Counsel Contact
Attorney:
Firm:
Email:

**Case Name: Lynum v. AutoCamp Yosemite
Class and PAGA Settlement**

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	267	Undeliverable Rate:	10%
Claims Rate:	N/A	Mail Skip Trace Success Rate:	85%
Opt-out Rate:	1%	Call Rate:	4%
Language(s) for Communication	EN/SP	Average Call Length:	4 Minutes
Reminder Mailing:	N/A	Fund Distribution:	Simpluris
Unclaimed Funds:	Escheat	Number of Distributions:	1
State(s):	CA	Tax Year(s):	1
Length of Administration:	9 Months		

Case Setup

- Undertake postings on Simpluris website of key documents as ordered by the Court (e.g. orders and the Settlement Agreement)
- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$110.00	2	\$220.00
Case Document Web Postings	\$225.00	1	\$225.00
Database Manager - Initial Data Analysis	\$125.00	2	\$250.00
Total:			\$695.00

Notice and Communications

- Spanish Translation of the class Notice
- 14-page Notice Packet: Opt-Out Form, Dispute Form, Objection Form, and Address Change Form, sent by First Class US Mail, in English and Spanish

Category	Unit Value	# of Units	Total
Spanish Translations - assuming 7,000 words	\$0.25	7,000	\$1,750.00
NCOA/CASS/LACS	\$0.14	267	\$37.38
Bilingual Notice Packet - assuming 28 images	\$6.00	267	\$1,602.00
Postage	\$0.72	267	\$192.24
Undeliverable Processing and Skip Trace	\$0.32	27	\$8.64
Remail Notice (assuming 85% skip trace success)	\$7.00	23	\$160.65
Remail Postage	\$0.72	23	\$16.52
Mailing Supervisor	\$55.00	3	\$165.00
Total:			\$3,932.43

Contact Center

- Establish case-specific toll-free number and 24/7 IVR
- Assuming 4-minute calls

Category	Unit Value	# of Units	Total
Call Center Set Up	\$350.00	1	\$350.00
Toll Free Monthly Maintenance	\$95.00	9 Months	\$855.00
IVR (includes toll-free number charges)	\$15.00	1	\$15.00
Subtotal			\$1,220.00

Administration

- Process incoming class and counsel communications, opt-outs, disputes, and objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	2	\$250.00
Project Manager	\$110.00	2	\$220.00
Dispute Processing	\$1.75	13	\$23.36
Opt-out Processing	\$1.75	3	\$5.25
Reporting to Counsel (hours)	\$100.00	3	\$300.00
Total:			\$798.61

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Uncashed funds will be sent to the California Controller's Unclaimed Property Fund
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	2	\$250.00
Disbursement Manager - Data Validation	\$90.00	2	\$180.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Reconciliation and Maintenance	\$125.00	9	\$1,125.00
Print & Mail Distribution Check and Tax Docs	\$0.60	267	\$160.20
Postage	\$0.72	267	\$192.24
Process Returned Checks (assuming 5%)	\$0.20	14	\$2.80
Skip Trace Search Undeliverable Checks	\$0.12	14	\$1.68
Remail Checks (includes postage)	\$1.70	14	\$23.80
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
QSF Annual Tax Reporting and Reconciliation	\$850.00	1	\$850.00
Distribution Manager	\$90.00	2	\$180.00
Total:			\$4,640.72

Case Completion

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

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc.	\$45.00	2	\$90.00
Project Manager-Wrap-up Final Issues	\$110.00	2	\$220.00
Total:			\$560.00

Total Estimated Cost of Administration:	\$11,847
Less Client Courtesy Discount:	-\$2,847
Discounted Total:	\$9,000

Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and compensation for services Simpluris performs for financial institutions to be eligible for FDIC deposit insurance. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

10. Rights in Data: Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

11. Electronic Communications: During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

12. Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

13. Waiver: Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

14. Termination: Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.

17. Confidentiality: Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

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

19. Severability: If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Database Administration: Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

21. Entire Agreement: These Terms and Conditions together with the Proposal constitutes the entire agreement between the parties with respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

EXHIBIT 11

XPAND

Case Name: Lynum v. AutoCamp Yosemite
 Date: August 23, 2024
 Client Name: Nora Greer
 Client Email: nora@spivaklaw.com
 Xpand Contact: Jonathan Paul
 Xpand Contact Email Address: jonathan@xpandlegal.com
 Xpand Contact Phone Number: 310.948.7117

*Cost Estimate for Legal Administration Services
 *Pricing Good for 90 Days
 *Assumes Scope Within - Additional Services Priced Accordingly

Key Assumptions Used for Pricing	
Class Size	267
Undeliverable Mail (estimated %)	10%
Forwarded Mail (estimated %)	5%
Toll Free Telephone Support	Yes
Website	Yes
Spanish Translation	Yes
National Change of Address (NCOA)	Yes
Wage Tax Reporting	Yes
Number of States for Tax Reporting	1
Number of Payment Distributions	1
Tax Reporting Years	1
Remaining Funds After Distribution	Controller

Case Setup				
Service	Type	Cost Per Piece	Volume	Total
Project Manager - Case Setup, Document Review & Timeline	Hourly	\$125.00	1	\$125.00
Data Analyst - Data Analysis, Formatting, Uploading to Database*	Hourly	\$125.00	1	\$125.00
NCOA (Includes CASS & LACS)	Flat Fee	\$150.00	1	\$150.00
Spanish Translation	Flat Fee	\$1,133.91	1	\$1,133.91
Toll Free Telephone Support	Flat Fee	\$500.00	1	\$500.00
Static Website	Flat Fee	\$750.00	1	\$750.00
Total				\$2,783.91

*Xpand assumes mailing data will be provided in Microsoft Excel or other usable format and will not require substantial manipulation. Additional formatting and manipulation will be billed at \$125/hour.

Notification				
Service	Type	Cost Per Piece	Volume	Total
Print & Mail Notice Package	Per Piece	\$1.50	267	\$400.50
USPS First Class Mail - 1oz	Per Piece	\$0.69	267	\$184.23
Submission Processing (Opt Outs, Disputes, Objections)	Hourly	\$75.00	3	\$225.00
Undeliverable Mail Processing	Per Piece	\$3.00	27	\$80.10
Address Trace Undeliverable Mail	Per Piece	\$3.00	27	\$80.10
Remail Notice Package (Undeliverable & Forwards)	Per Piece	\$6.00	35	\$208.26
Total				\$1,178.19

Project Management				
Service	Type	Cost Per Piece	Volume	Total
Project Manager - Client Inquiries, General Oversight & Management	Hourly	\$125.00	3	\$375.00
Status Reporting (Ongoing & Final)	Hourly	\$75.00	2	\$150.00
Declaration (Final Approval & Payment)	Hourly	\$125.00	1	\$125.00
Executive Oversight	Hourly	\$200.00	1	Waived
Total				\$650.00

Distribution				
Service	Type	Cost Per Piece	Volume	Total
Project Manager - Setup & Preparation	Hourly	\$125.00	1	\$125.00
Data Analyst - Payment File Production & Quality Review	Hourly	\$125.00	1	\$125.00
Print & Mail Payments	Per Piece	\$1.50	267	\$400.50
USPS First Class Mail - 1oz	Per Piece	\$0.69	267	\$184.23
Undeliverable Payment Processing	Per Piece	\$3.00	27	\$80.10
Address Trace Undeliverable Mail	Per Piece	\$3.00	27	\$80.10
Remail Payments (Undeliverable & Forwards)	Per Piece	\$7.00	35	\$242.97
Tax ID Setup & Shutdown	Flat Fee	\$250.00	1	\$250.00
Qualified Settlement Fund (QSF) Creation, Reporting & Closure	Hourly	\$125.00	10	\$1,250.00
QSF Monthly Fees & Account Reconciliation	Per Piece	\$100.00	4	\$400.00
Process Remaining Funds	Flat Fee	\$750.00	1	\$750.00
Total				\$3,887.90

Total Case Cost - Flat Fee:				\$8,500.00
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Terms & Conditions

All services to be provided by Xpand Legal (hereinafter, "Xpand") to Client shall be subject to the following Terms and Conditions of this Agreement:

- **Services:** Subject to the terms hereof, Xpand 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 referenced and in accordance of the Court's direction. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not include any services not referenced in the request for proposal. These services do not constitute legal services or advice. Xpand is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.
- **Charges for Services:** Charges to the Client for services shall be on a time and materials basis at our prevailing rates and are subject to change. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to Xpand. Actual fees charged by Xpand to Client may be greater or less than the estimate, and Client shall be responsible for the payment of all charges and expenses in accordance with Section 3 below. Charges incurred related to 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. Xpand may derive financial benefits from financial institutions in connection with the deposit and investment of funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.
- **Payment of Charges:** Xpand will process payment of charges once payments are made to class members and counsel in accordance with direction from the court. However, decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement or case status, do not affect the Client's liability to Xpand for payment of services. Services are not provided on a contingency fee basis.
- **Indemnification:** Client will indemnify and hold Xpand (and the officers, employees, affiliates and agents harmless against any Losses incurred by Xpand, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any aspect of the project by Xpand in accordance with Client's instructions.
- **Confidentiality:** Xpand maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of data provided to Xpand by Client or another party to the action. Should Xpand 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, Xpand will notify the Client, unless prohibited by applicable law. The Client will have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse Xpand 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 Xpand 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, Xpand will not be liable for breach of said obligation.
- **Data Rights:** Xpand does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by Xpand in the ordinary course of business in the performance of this Agreement.
- **Document Retention:** Unless directed otherwise in writing by Client, Xpand will maintain documents 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:** Xpand is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of Xpand to the Client shall not exceed the total amount billed to the Client for the 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 Xpand. 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. Xpand may terminate this Agreement at will (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. The Client is obligated to pay for all Services at the time of termination under this paragraph; no deferral period shall take place.
- **Notice:** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of Xpand 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 Xpand of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond Xpand's reasonable control, then such performance shall be excused and this Agreement, at Xpand'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 either party in exercising any right will operate as a waiver of, or impair, any 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 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.
- **Counterparts:** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

EXHIBIT 12

CASE NAME: LYNUM v AUTOCAMP YOSEMITE

Requesting Paralegal: Nora Greer

Plaintiff or Defense: Plaintiff

Firm Name: The Spivak Law Firm

Telephone: (818) 582-3073

Email: nora@spivaklaw.com

Date: July 22, 2024

Prepared By: Tim Phillips

50 Corporate Park, Irvine CA 92606

Tim@CPTGroup.com

Direct Number: (818) 415-2703

Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Class Size: 267

Opt-Out Filing Rate: 1.5%

No. of Checks Issued: 263

Language Translation Services: Yes

Settlement Website: Static Website

Notice Procedures: Mail

Undeliverable Mail Rate: 8%

Payment Option: Check

Unclaimed Funds: SCO

Postage Total: \$480.25

Grand Total: \$13,320.97

CPT'S DISCOUNTED FEE: \$10,000.00

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	2	\$190.00
Programming: Data Base Setup	\$150.00	2	\$300.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
Sub Total:			\$2,190.00

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	27	\$22.95
Print & Mail Notice Packets	\$1.50	267	\$400.50
First-Class Postage (up to 2 oz.)*	\$0.97	267	\$258.99
Sub Total:			\$1,007.44

*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	21	\$10.50
Skip Trace for Best Address	\$1.00	19	\$19.00
Print & Remail Notice Packets	\$1.50	15	\$22.50
First-Class Postage (up to 2 oz.)	\$0.97	15	\$14.55
Sub Total:			\$126.55

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	2	\$300.00
Project Manager: Validate Opt-Outs	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out Processing	\$2.50	4	\$10.01
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:			\$477.20

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	54	\$162.00
Sub Total:			\$462.00

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	263	\$26.30
Sub Total:			\$461.30

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.

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	263	\$657.49
First-Class Postage (up to 1 oz.)	\$0.69	263	\$181.47
Project Supervisor: Account Reconciliation	\$150.00	12	\$1,800.00
Update Undeliverable Checks Database	\$0.50	13	\$6.57
Skip Trace for Best Address	\$1.00	13	\$13.15
Remail Undeliverable Checks	\$2.50	12	\$30.00
First-Class Postage (up to 1 oz.)	\$0.69	12	\$8.28
Re-Issue Checks as Required	\$5.00	11	\$55.00
First-Class Postage (up to 1 oz.)	\$0.69	11	\$7.59
Sub Total:			\$4,749.55

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	55	\$8.25
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:			\$806.93

Total Administration Costs: \$13,320.97

Courtesy Discount: -\$3,320.97

CPT'S DISCOUNTED FLAT FEE: \$10,000.00

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) 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 13