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8 Attorneys for Plaintiff(s),
9 ARLENE APODACA, and all others similarly situated

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

13 ARLENE APODACA, on behalf of herself and
14 all others similarly situated, and the general
15 public, and as an "Aggrieved Employee" on
16 behalf of other "Aggrieved Employees" and the
State of California under the Private Attorneys
General Act of 2004,

17 *Plaintiff,*

18
19 vs.

20 R AND T OIL INCORPORATED, a California
21 corporation; RAFI BARTANIYAN, an
individual; THOMAS VARTANIAN, an
22 individual; and DOES 1–50, inclusive,
23 *Defendants.*

Case No. CVRI2402196

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
ARLENE APODACA'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: October 12, 2026
Hearing Time: 8:30 a.m.
Hearing Dept.: Dept. 1, The Honorable
Harold W. Hopp

Action filed: April 19, 2024
Trial Date: Not Set



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**DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF ARLENE
APODACA'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

I, DAVID SPIVAK, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiff Arlene Apodaca ("Plaintiff") in her lawsuit against Defendants R And T Oil Incorporated, Rafi Bartaniyan, and Thomas Vartanian (collectively "Defendants"). Plaintiff and Defendants are collectively referred to as the "Parties."

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

3. The Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement") is attached hereto as **Exhibit 1**.

4. ***CMO dated September 11, 2024, § G(1)(a), Settlement Agreements in General: The settlement agreement shall not provide that any order, notice, form, or judgment shall include any provision that this order prohibits from being included in such a document. (See §§ G.3 through G.10 and I, infra.)*** The Settlement Agreement does not provide that any order, notice, form, or judgment shall include any provision that the CMO prohibits from being included in such a document. See **Exhibit 1**, generally.

5. ***CMO dated September 11, 2024, § G(1)(b), Settlement Agreements in General: The settlement agreement shall be written, signed by all necessary parties, and filed, either in the form of a separate stipulation or as an authenticated attachment to a declaration of counsel.*** The Settlement is written, signed by all necessary Parties, and attached to this declaration as stated above. See **Exhibit 1**, generally.

6. ***CMO dated September 11, 2024, § G(2), Notices of Settlement: Regardless of the terms of the proposed settlement, counsel shall not file a Notice of Settlement of Entire Case (Judicial Council form CM-200).*** Plaintiff has not filed a Notice of Settlement of Entire Case (Judicial Council form CM-200).

The Release Provisions

7. ***CMO dated September 11, 2024, § G(3)(e)(i): The Motion in General: Any***



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1 *release to be given by the participating class members (other than the class representatives)*
2 *shall be limited to: The defendants named in the complaint, together with their officers,*
3 *directors, employees and agents. If any other parties are sought to be released, the motion*
4 *shall both (A) identify those other parties by name and (B) explain the facts that justify their*
5 *inclusion.* Under the Settlement, the release to be given by the Participating Class Members (other
6 than the Class representative) is limited to Defendants named in the Operative Complaint, together
7 with their officers, directors, employees, and agents. The
8 Release Party is defined as follows:

9 “Released Parties” means: Defendants and each of their officers, directors, employees and
10 agents.

11 See Settlement 1.42.

12 8. ***CMO dated September 11, 2024, § G(3)(e)(ii): The Motion in General: Any***
13 ***release to be given by the participating class members (other than the class representatives)***
14 ***shall be limited to: The claims stated in the complaint and those based solely upon the facts***
15 ***alleged in the complaint.*** Under the Settlement, the release to be given by the Participating Class
16 Members (other than the Class representative) is limited to the claim stated in the Operative
17 Complaint, and those based solely upon the facts alleged in the Operative Complaint:

18 RELEASES OF CLAIMS. Effective on the date when (1) Defendants fully fund the entire
19 Gross Settlement Amount and (2) provide written confirmation to Plaintiff’s counsel that
20 they have paid the taxes owed on the Wage Portion of the Individual Class Payments to
21 the appropriate tax entities, Plaintiff, Class Members, and Class Counsel will release
22 claims against all Released Parties as follows:

23 Plaintiff’s Release. Plaintiff and her respective former and present spouses,
24 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
25 release and discharge Released Parties from all claims, transactions, or occurrences that
26 occurred during the Class Period, including, but not limited to: (a) all claims that were, or
27 reasonably could have been, alleged, based on the facts contained, in the Operative
28 Complaint and (b) 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 6.3, below (“Plaintiff’s Release”).
Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or
to any claims for vested benefits, unemployment benefits, disability benefits, social
security benefits, workers’ compensation benefits that arose at any time, or based on
occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover



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1 facts or law different from, or in addition to, the facts or law that Plaintiff now knows or
2 believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain
3 effective in all respects, notwithstanding such different or additional facts or Plaintiff's
4 discovery of them.

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

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

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

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

26 See Settlement Para. 6.

27 9. ***CMO dated September 11, 2024, § G(3)(e)(iii): The Motion in General: Any***
28 ***release to be given by the participating class members (other than the class representatives)***
shall be limited to: Liability that arose during the class period as defined by the settlement
agreement. Under the Settlement, the release to be given by the Participating Class Members (other
than the Class representative) is limited to liability that arose during the Class Period. See above.

10. ***CMO dated September 11, 2024, § G(3)(e)(iv): The Motion in General: Any***
release of claims for PAGA penalties shall bind only the named plaintiff and the State of
California and shall release only those claims described in the notice sent by plaintiff to the



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1 *LWDA, and only to the extent that they are alleged in the complaint. An example of an*
2 *acceptable release is as follows: "Plaintiff releases all claims for statutory penalties that*
3 *could have been sought by the Labor Commissioner for the violations identified in Plaintiffs*
4 *pre-filing letter to the LWDA; Plaintiff does not release any aggrieved employee's claim for*
5 *wages or damages."* Under the Settlement, Plaintiff releases all claims for civil penalties that
6 could have been sought by the Labor Commissioner for the violations identified in Plaintiff's
7 pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
8 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. See
9 above.

10 *No Reversion*

11 11. *CMO dated September 11, 2024, § G(3)(h): The Motion in General: If the*
12 *settlement provides that any portion of the consideration paid or deposited by the defendant*
13 *may revert to the defendant, the motion shall explain (i) the circumstances under which*
14 *that reversion would occur, (ii) the maximum amount of any reversion, and (iii) why that*
15 *reversion is fair.* The Settlement does not provide that any portion of the consideration paid
16 or deposited by Defendants may revert to the Defendants.

17 *Taxes*

18 12. *CMO dated September 11, 2024, § G(3)(i): The Motion in General: If the*
19 *settlement includes compensation for unpaid wages, the motion shall describe how the*
20 *employer's share of any applicable payroll taxes will be handled. The Court suggests that*
21 *the employer's share not be paid out of the gross settlement fund. The Court is not likely*
22 *to include the amount of those payments when calculating the plaintiffs counsel's*
23 *percentage attorney's fee.* The Settlement provides that Defendants will separately pay the
24 employer's share of any applicable payroll taxes. Settlement Para. 3.2.4.1.

25 13. *CMO dated September 11, 2024, § G(3)(j): The Motion in General: The*
26 *motion shall describe how individual settlement payments will be allocated for tax purposes*
27 *among wages, interest and non-PAGA penalties and how such allocation was determined.*
28 *Payments to aggrieved employees pursuant to the settlement of any PAGA claim should be*



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1 *addressed separately and allocated solely as penalties. The 25% portion of PAGA penalties*
2 *payable to aggrieved employees should not be included as part of the net settlement*
3 *amount.* The Settlement provides as follows with regard to the tax treatment of settlement
4 shares:

5 Tax Allocation of Individual Class Payments. 20.00% of each Participating Class
6 Member's Individual Class Payment will be allocated to settlement of wage claims (the
7 "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported
8 on an IRS W-2 Form. 80.00% of each Participating Class Member's Individual Class
9 Payment will be allocated to settlement of claims for interest and penalties (the "Non-
Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will
be reported on IRS 1099 Forms. Participating Class Members assume full responsibility
and liability for any employee taxes owed on their Individual Class Payment.

10
11 Settlement Para. 3.2.4.1. The 25% portion of PAGA penalties payable to Aggrieved
12 Employees is not included as part of the net settlement amount. The Administrator will also
13 report the Individual PAGA Payments on IRS 1099 Forms. Settlement Para. 3.2.5.2.

14 ***Factual and Procedural Background***

15 14. Defendants operate gas station and convenience stores. Defendants employed
16 Plaintiff as a Cashier from about October 14, 2023, until December 10, 2023.

17 15. On April 19, 2024, Plaintiff notified Defendants and the California Labor and
18 Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys
19 General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor
20 Code violations committed by Defendants. A true and correct copy of the letter to the LWDA
21 dated April 19, 2024 is attached hereto as **Exhibit 2**.

22 16. On April 19, 2024, Plaintiff filed a Class Action Complaint in the Riverside
23 County Superior Court, Case No. CVRI2402196, against Defendants on behalf of herself and
24 others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All
25 Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197,
26 and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to
27 Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code
28 §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting



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1 Time Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§
2 17200, et seq.). On June 25, 2024, Plaintiff filed her First Amended Complaint adding a claim
3 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
4 (“PAGA”). On July 25, 2024, Defendants filed an answer to Plaintiff’s First Amended Complaint.
5 Defendants deny all of Plaintiff’s allegations and strongly contend that their wage and hour
6 policies, practices and procedures are fully compliant with all applicable laws. A true and correct
7 copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff’s First
8 Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Defendants’
9 Answer is attached hereto as **Exhibit 5**.

10 17. *CMO dated September 11, 2024, § G(3)(a)(vi), The Motion in General: The*
11 *motion shall be supported by a declaration from the plaintiffs attorney that, inter alia:*
12 *Describes in detail the nature and extent of the formal and informal discovery exchanged*
13 *and other factual investigation conducted to determine the size of the class and the strength*
14 *of the class claims.* Prior to attending mediation and on December 10, 2024, Plaintiff requested
15 that Defendants informally disclose documents and data to enable Plaintiff to prepare for
16 settlement discussions, including the number of putative class members and aggrieved employees,
17 the number of paychecks and workweeks for the various limitations periods applicable to
18 Plaintiff’s claims. Plaintiff also requested a reasonable, randomly selected sample of Defendants’
19 time, payroll, and expense records, and related personnel records. *Id.* Finally, Plaintiff requested
20 Defendants’ written policies applicable to the claims at hand and asked Defendants to identify
21 any and all comparable claims against them.

22 18. The Parties thereafter engaged in an informal, voluntary exchange of information
23 in the context of privileged settlement discussions to facilitate an early mediation. Prior to
24 mediation, Defendants produced Plaintiff’s personnel file and wage statements, to the extent
25 available, payroll records for all employees going back to February of 2020, sample schedules,
26 and sample POS shift close reports for all their current employees (a total of seven (7) employees).
27 Defendants also disclosed that there have not been any comparable claims against them.

28 19. Defendants contend that they employed 55 putative Class Members during the



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1 Class Period. Defendants produced the shift close reports of 12.70% of the Class Members, for
2 their seven (7) current employees.

3 20. Plaintiff retained Sridhar Srinivasan, a data analyst, to analyze the sample. Plaintiff
4 also employed the Raosoft⁷ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to
5 determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004)
6 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative
7 margin of error of 32.4 percent was unacceptable, whereas the *Duran* court found a relative
8 margin of error of 43.3 percent was unacceptable. Using a margin of error of 25%, a confidence
9 level of 85%, and a population size of 55, the Raosoft Sample Size Calculator recommended a
10 sample of 6. A true and correct copy of the results from the Raosoft Sample Size Calculator is
11 attached as **Exhibit 6** (Raosoft Sample Size Calculator results print-out). Thus, the sample
12 population that Plaintiff's data analyst evaluated is statistically reliable.

13 21. On March 5, 2025, following the foregoing informal discovery and exchange of
14 information, the Parties participated in a mediation session presided over by Mediator Scott
15 Radovich, an experienced class action mediator. During the mediation, the Parties had a full day
16 of productive negotiations and reached agreement on a class-wide settlement after the mediation
17 session. During the mediation sessions, each side, represented by her/its respective counsel,
18 recognized the risk of an adverse result in the Action and agreed to settle the Action and all other
19 matters covered by this Agreement pursuant to the terms and conditions of this Agreement.

20 22. **Mediation.** On March 05, 2025, following the foregoing informal discovery and
21 exchange of information, the Parties participated in a mediation session presided over by Mediator
22 Scott Radovich, an experienced class action mediator. During the mediation sessions, each side,
23

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



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1 *case number of any such case, the nature of the claims asserted, the definition of the class*
2 *or other parties on whose behalf the action is brought, and the procedural status of that*
3 *case.* I am not aware of any class, representative, or other collective action in any other court,
4 in this, or any other jurisdiction, that asserts claims similar to those asserted in this action, on
5 behalf of the class or group of individuals, some or all of whom would also be members of
6 the class defined in this action. I have made a reasonable inquiry of the other members of my
7 law firm to determine whether they are aware of any such similar actions. Based on these
8 inquiries, I am aware of no such similar actions. Defendants also disclosed that there have not
9 been any comparable claims against them. *See* Settlement, § 2.6; *see also* Declaration of Garabet
10 O. Khajadourian at ¶¶ 2-3, Declaration of Rafi Bartaniyan at ¶¶ 4-5, and Declaration of Thomas
11 Vartanian at ¶¶ 4-5 filed concurrently with this Motion.

12 25. *CMO dated September 11, 2024, § G(3)(b): The Motion in General: The*
13 *motion shall be supported by a declaration from the defendant's attorney that states (i)*
14 *whether the attorney is aware of any class, representative or other collective action in any*
15 *other court in this or any other jurisdiction that asserts claims similar to those asserted in*
16 *this action on behalf of a class or group of individuals some or all of whom would also be*
17 *members of the class defined in this action and (ii) the name and case number of any such*
18 *case, the nature of the claims asserted, the definition of the class or other parties on whose*
19 *behalf the action is brought, and the procedural status of that case.* Please see the
20 declaration of Defense Counsel on this subject concurrently filed with this Motion.

21 *Uncashed Checks*

22 26. *CMO dated September 11, 2024, § G(3)(c)(i): The Motion in General: The*
23 *motion shall describe how the value of any uncashed checks, unpaid cash residue, or other*
24 *unclaimed or abandoned funds will be distributed. In a wage-and-hour case or any other*
25 *case seeking relief on behalf of a class of employees, the Court believes that redistribution*
26 *of the value of uncashed settlement check to those class members who have cashed their*
27 *checks will better serve the public interest and the interest of the class than distribution in*
28 *the manner otherwise prescribed by California Code of Civil Procedure section 384(b). If*



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1 *one or more of the parties disagree, then the motion shall be supported by a declaration*
2 *from a party or the party's counsel explaining the factual basis for the disagreement.* The
3 Settlement provides for the disposition of uncashed checks as follows:

4
5 For any Class Member whose Individual Class Payment check or Individual PAGA
6 Payment check is uncashed and cancelled after the void date, the Administrator shall
7 redistribute the funds represented by such checks to those Class Members who have
8 cashed their checks. For any redistributed checks that remain uncashed or cancelled after
9 the void date, the Administrator shall transmit the funds represented by such checks to the
10 California Controller's Unclaimed Property Fund in the name of the Class Member
11 thereby leaving no "unpaid residue."

12 Settlement Para. 4.4.3. In my view, sending funds represented by uncashed checks to the
13 Unclaimed Property Fund instead of redistributing them or sending them to a *cy pres* recipient is
14 the best way to ensure that the Class Members and Aggrieved Employees actually receive their
15 portions of the Settlement.

16 27. *CMO dated September 11, 2024, § G(3)(c)(ii): The Motion in General: In any*
17 *other type of case, the motion shall describe the intended distribution of unclaimed funds*
18 *in accordance with California Code of Civil Procedure section 384(b), and shall explain*
19 *the reason for choosing proposed recipient as opposed to other potential recipients*
20 *considered.* I explain my reasons for choosing the Unclaimed Property Fund to receive the
21 funds represented by uncashed settlement checks above.

22 28. *CMO dated September 11, 2024, § G(3)(c)(iii)(A): The Motion in General:*
23 *The motion shall be supported by a declaration from a knowledgeable person from the*
24 *proposed recipient. The declaration shall: Establish that the recipient is a nonprofit*
25 *organization, foundation, or program of the type described in that subdivision.* Because the
26 Settlement sends the funds represented by uncashed checks to the Unclaimed Property Fund
27 and not a *cy pres* recipient, this section of the CMO is inapplicable.

28 29. *CMO dated September 11, 2024, § G(3)(c)(iii)(B): The Motion in General:*
29 *The motion shall be supported by a declaration from a knowledgeable person from the*
30 *proposed recipient. The declaration shall: Describe the history of the recipient, the types of*
31 *projects that it has conducted or supported over the last five years, and any particular use to*



1 *which it would intend to devote the unpaid residue if received.* Because the Settlement sends
2 the funds represented by uncashed checks to the Unclaimed Property Fund and not a *cy pres*
3 recipient, this section of the CMO is inapplicable.

4 30. ***CMO dated September 11, 2024, § G(3)(c)(iii)(C): The Motion in General:***
5 ***The motion shall be supported by a declaration from a knowledgeable person from the***
6 ***proposed recipient. The declaration shall: Describe the geographic area in which the***
7 ***recipient operates in general, and the nature and extent of the services it provides in Riverside***
8 ***County in particular.*** Because the Settlement sends the funds represented by uncashed checks
9 to the Unclaimed Property Fund and not a *cy pres* recipient, this section of the CMO is
10 inapplicable.

11 31. ***CMO dated September 11, 2024, § G(3)(c)(iv): The Motion in General: The***
12 ***declarations of the attorneys for the plaintiff and for the defendant shall describe both (A)***
13 ***any relationship between the proposed recipient and (1) any class representative or other***
14 ***party, (2) any officer, director, or manager of any party, or (3) any attorney or law firm for***
15 ***any party, and (B) the inquiries the attorney made to determine whether there is any such***
16 ***relationship.*** Because the Settlement sends the funds represented by uncashed checks to the
17 Unclaimed Property Fund and not a *cy pres* recipient, this section of the CMO is inapplicable.

18 32. ***CMO dated September 11, 2024, § G(3)(c)(v): The Motion in General: The***
19 ***agreement shall not provide that the unclaimed funds be deposited into the Industrial***
20 ***Relations Unpaid Wage Fund. Cal. Lab. Code§ 96.6. That fund is limited to wages or***
21 ***monetary benefits determined by the Labor Commissioner to be due to an employee after***
22 ***an investigation by the Labor Commissioner, and thus will not accept wages, penalties or***
23 ***interest distributed as part of the settlement of a lawsuit brought by a plaintiff other than***
24 ***the Labor Commissioner.*** Because the Settlement sends the funds represented by uncashed
25 checks to the Unclaimed Property Fund, this section of the CMO is inapplicable.

26 ***Ascertainable and Numerous Class***

27 33. A class is ascertainable when it may be readily identified without unreasonable
28 expense or time by reference to official records. Here, Plaintiff maintains that the above-defined



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1 Class is ascertainable because its members may be identified by reference to Defendants' records
2 and Defendants have agreed to share the relevant information from their records to facilitate the
3 settlement process. Therefore, the Settlement Class is ascertainable.

4 34. *CMO dated September 11, 2024, § G(3)(a)(i), The Motion in General: The*
5 *motion shall be supported by a declaration from the plaintiffs attorney that, inter alia: Sets*
6 *forth the attorney's estimate of the number of individuals in the class and for any settlement*
7 *that includes a claim for statutory penalties under PAGA, sets forth the attorney's estimate*
8 *of the number of aggrieved employees employed during the applicable PAGA period.* The
9 Settlement Class has sufficiently numerous members to render joinder impractical. No set number
10 is required as a matter of law to maintain a class action. The California Supreme Court has upheld
11 a class of as few as 10 individuals. Defendants estimate that there are approximately 55 Class
12 Members for the Class Period. Plaintiff maintains that it would be impractical and economically
13 inefficient to require each Settlement Class Member to separately maintain an individual action
14 or be joined as a named plaintiff in this action. In light of these considerations, the Settlement
15 Class's membership is sufficiently numerous. Additionally, there are 25 Aggrieved Employees
16 for the PAGA Period.

17 *Predominant Common Questions*

18 35. A question of law or fact is common to the members of a class if it may be resolved
19 through common proof. In this case, there are many predominant common questions. Plaintiff
20 asserts all class members were subject to the same or similar operations and employment policies,
21 practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay
22 wages for all hours worked, failure to provide meal periods, failure to authorize and permit rest
23 periods, failure to indemnify for business expenses, failure to issue proper wage statements,
24 failure to timely pay wages, and related labor law violations, all of which Plaintiff claims
25 constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common
26 questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned
27 to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendants failed
28 to provide the class with all meal and rest periods in compliance with California law; (3) Whether



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1 Defendants failed to pay the class one additional hour of pay on workdays they failed to provide
2 the class with one or more meal or rest periods in compliance with California law; (4) Whether
3 Defendants failed to indemnify the class for all necessary business expenditures incurred during
4 the discharge of their duties; (5) Whether Defendants knowingly and intentionally failed to
5 provide the class with accurate wage statements; (6) Whether Defendants willfully failed to
6 provide the class with timely final wages; and (7) Whether Defendants engaged in unfair
7 competition within the meaning of Business and Professions Code section 17200, *et seq.*, with
8 respect to the class.

9 *Typicality*

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

18 *Adequacy*

19 37. The adequacy requirement is met where the plaintiff is represented by counsel
20 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
21 the class's interests. In other words, where the plaintiff has adequate counsel, the plaintiff may
22 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
23 ability to represent the class.

24 38. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
25 with the absent Settlement Class Members. Plaintiff contends that she is an adequate class
26 representative. Plaintiff and the Class Members have strong and co-extensive interests in this
27 litigation because they all worked for Defendants during the relevant time period, allegedly
28 suffered the same alleged injuries from the same alleged course of conduct, and there is no



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1 evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff
2 has demonstrated her commitment to the Settlement Class by, among other things, retaining
3 experienced counsel, providing counsel with documents and extensively speaking with them to
4 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
5 well as exposing herself to the risk of attorneys' fees and costs awards against her if this lawsuit
6 had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative. The
7 declaration of Plaintiff Arlene Apodaca on this subject will be filed concurrently with this
8 declaration.

9 *Background of Class Counsel*

10 39. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science
11 from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from
12 Southwestern University School of Law.

13 40. In December of 1995, the Supreme Court for the State of California admitted me
14 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
15 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
16 2013, I became admitted to the New York State Bar.

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

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

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

26 a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
27 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
28 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and



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discipline. The jury awarded compensatory damages. Court subsequently awarded additional back pay and gave Plaintiffs a retroactive promotion. See "Lawsuit Puts Customs Service on Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego Union-Tribune, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias And Retaliation" by Valerie Alvord, San Diego Union-Tribune, May 16, 1998.

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

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

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

e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board

(1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs Agent, followed by an award of Attorneys' fees and costs.

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

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

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

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

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



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

4 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
5 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
6 court on behalf of nonexempt employees).

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

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

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

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

20 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
21 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
22 action settlement on behalf of medical devices employees).

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

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



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

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

7 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
8 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
9 on behalf of dairy and agricultural laborers).

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

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

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

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

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

27 r. *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District
28 of Colorado, Case No. 13-CV-01229-REB-BNB (appointed Class Counsel and granted final



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

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

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

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

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

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

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

22 ***Class Action Treatment Is Superior***

23 47. A class action is also superior to other means of adjudicating the issues in this
24 action. The predominance of common legal and factual questions shows that this Court could
25 fairly adjudicate the claims of Class Members through a single class action. In view of the
26 *theoretical* alternatives that proposed class members could potentially utilize—representative
27 PAGA action (where there is less relief available), individual civil lawsuits or wage claims
28 through the Division of Labor Standards Enforcement (where there would be relatively little



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1 money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
2 superior to all of them. Thus, this consideration supports conditional class action treatment for
3 purposes of this Settlement only.

4 ***The Settlement is Presumptively Fair***

5 48. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted
6 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
7 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
8 weaknesses of their respective cases and Defendants’ estimated exposure. Both defense counsel
9 and I are particularly experienced in employment law and wage and hour class actions. We are
10 experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks
11 and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and
12 hour class settlements, including many involving the same issues presented here. Counsel on both
13 sides share the view that the Settlement is a fair and reasonable settlement in light of the
14 complexities of the case and uncertainties of class certification and litigation, and a fair result for
15 the Class Members.

16 ***Exposure & Risk Analysis***

17 49. ***CMO dated September 11, 2024, § G(3)(a)(ii), The Motion in General. The***
18 ***motion shall be supported by a declaration from the plaintiffs attorney that, inter alia: (A)***
19 ***Sets forth the attorney's estimate of the total amount of damages, monetary penalties or***
20 ***other relief that the class would be awarded on each claim if that claim were entirely***
21 ***successful at trial; (B) explains how that estimate was calculated; and (C) states the***
22 ***collective total for all of the claims.*** Plaintiff prepared “damages” estimates in advance of the
23 mediation. In advance of the mediation, Plaintiff determined Defendants’ maximum possible
24 exposure for restitution and penalties to be approximately \$1,135,932.22 (consisting of
25 \$54,306.25 in unpaid wages, \$139,630.40 in missed meal period premium wages, \$139,630.40 in
26 missed rest break premium wages, \$92,350.00 for wage statement penalties, \$181,221.60 for
27 waiting time penalties, and \$514,800.00 for civil penalties). Plaintiff calculated the damages
28 based on the number of workweeks and pay periods Plaintiff had estimated based on the



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1 information provided by Defendants, Plaintiff's reports, and the sample data. True and correct
2 copies of the spreadsheets I prepared for mediation of this Action are collectively attached to this
3 declaration as **Exhibit 7**.

4 50. *CMO dated September 11, 2024, § G(9)(b)(iii): PAGA Penalties: If the*
5 *settlement provides for the payment of penalties under PAGA, the motion shall be*
6 *accompanied by a declaration describing how the penalties were calculated and otherwise*
7 *establishing facts sufficient to allow the Court to review and approve those penalties as*
8 *required by California Labor Code section 2699(l). In particular, the declaration shall*
9 *explain: The total amount of penalties for which the defendant is potentially liable if all*
10 *allegations are proven.* Plaintiff also determined Defendants' maximum exposure for civil
11 penalties to be \$514,800.00. Please see the aforementioned exhibit in the prior paragraph.

12 51. The estimates are in essence "home run" projections that omit data points that will
13 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
14 involved in litigating this Action. Plaintiff's Counsel applied discounts to the maximum exposure
15 to account for all other risks discussed below. While it is difficult to assign anything but crudely-
16 determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up*
17 *Stix* campaign (as discussed below) would preclude recovery for such employees is substantial
18 and alone justifies a significant discount because Defendants would likely by trial have gathered
19 releases from the majority of the Class Members. A settlement for approximately 58.69% of the
20 potential recovery is a proportion substantially in excess of recovery proportions sanctioned by
21 existing case law.⁸

22 52. My initial estimates do not realistically account for the risks outlined below or the

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



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1 risk that a class will not be certified. Therefore, I believe a class settlement for \$200,000.00 is fair
2 and reasonable.

3 53. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's
4 recovery for unpaid wages would be extremely limited at best, largely because Defendants claim
5 they prohibited off-the-clock work. Off-the-clock claims are difficult where a defendant requires
6 in its written policies that all work must take place while clocked in. *See Jong v. Kaiser*
7 *Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock
8 work for it to be compensable). *Id.* Moreover, while Defendants dispute that off-the-clock work
9 occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme
10 Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and
11 minute periods of time may still be subject to a *de minimis* defense even if compensable. *Id.*
12 (stating that "We do not decide whether there are circumstances where compensable time is so
13 minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*,
14 Defendants contend that the *de minimis* doctrine may apply here because the time spent off the
15 clock was minute and insignificant. Accordingly, a large award of penalties seems unlikely with
16 respect to this claim.

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

27 55. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff's
28 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a



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1 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
2 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
3 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
4 performed.” *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or
5 prohibited the employee from taking a proper break, or otherwise failed to release the employee
6 of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a
7 particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D.
8 Cal. 2010) 271 F.R.D. 629, 641.

9 56. Defendants contend they did not impede or discourage Plaintiff, or any other
10 employees, from taking their meal or rest periods. Defendants claim that their policies mandate
11 that employees take at least a 30-minute, uninterrupted meal period and record the beginning and
12 ending time of their meal breaks each day on their time records. As such, to the extent that
13 evidence might show a late, short or no lunch, individualized evidence may be necessary to
14 determine whether they occurred due to conduct of the Defendants or each of the employees
15 concerned. Accordingly, there is a significant risk that the value of Plaintiff’s meal period claim
16 would be substantially reduced at trial.

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



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surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

58. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the Court may consider Plaintiff’s claims as to Defendants’ alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that Defendants required Plaintiff and the Class Members to use their cellular phones, and failed to indemnify them for these business expenses. Defendants presented evidence that they have supplied their employees with tools, equipment, and other supplies. As such, there is a risk that the Court may consider Plaintiff’s claims to be individual in nature and unfit for classwide resolution.

59. **Risks Associated with the Statutory “Wage Statement” and Waiting Time Penalty Claims.** Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff’s wage statement and waiting time penalty claims have the same underlying risks as the above claims, as they are derivative of them. On their face, the wage statements issued by Defendants comply with the requirements of Labor Code § 226. Further, without proof of willful behavior, Plaintiff will be unable to recover these penalties.

60. **Risks Associated With the PAGA Claim.** *CMO dated September 11, 2024, § G(9)(b)(i): PAGA Penalties: If the settlement provides for the payment of penalties under PAGA, the motion shall be accompanied by a declaration describing how the penalties were calculated and otherwise establishing facts sufficient to allow the Court to review and approve those penalties as required by California Labor Code section 2699(l). In particular, the declaration shall explain: (i) The nature of the alleged violations.* As the Operative Complaint makes clear, Plaintiff predicates her PAGA claim on the same Labor Code violations as her other claims.

61. *CMO dated September 11, 2024, § G(9)(b)(ii): PAGA Penalties: The number of alleged individual violations, including both the length of the relevant employment period*



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1 *and the number of employees allegedly employed during that period.* Plaintiff's "damages"
2 spreadsheet, **Exhibit 7**, states the length of the relevant time period for the PAGA claim and the
3 number of employees allegedly employed during that time period.

4 62. *CMO dated September 11, 2024, § G(9)(b)(iii): PAGA Penalties: The total*
5 *amount of penalties for which the defendant is potentially liable if all allegations are proven.*

6 Plaintiff's "damages" spreadsheet, **Exhibit 7**, states the total amount of civil penalties for which
7 the Defendants are potentially liable if all allegations are proven.

8 63. *CMO dated September 11, 2024, § G(9)(b)(iv): PAGA Penalties: The total*
9 *amount of penalties defendant is likely to be found liable at trial considering the weight of*
10 *the evidence, the clarity of the applicable law, and the strength of any factual or legal defense*
11 *likely to be asserted by the defendant.* Plaintiff's "damages" spreadsheet, **Exhibit 7**, states the
12 total amount of penalties Defendants are likely to be found liable at trial considering the weight
13 of the evidence, the clarity of the applicable law, and the strength of any factual or legal defense
14 likely to be asserted by Defendants.

15 64. *CMO dated September 11, 2024, § G(9)(b)(v): PAGA Penalties: The likelihood*
16 *that any violations would be proven to have been knowing and intentional.* As I state above in
17 connection with Plaintiff's claims for statutory penalties with regard to proof of Defendants'
18 intent, knowledge and willfulness, there are serious risks to proving Defendants acted
19 intentionally, knowingly, and willfully in violating the rights of Class Members under the Labor
20 Code.

21 65. *CMO dated September 11, 2024, § G(9)(b)(vii): PAGA Penalties: How the*
22 *amount of the agreed-upon penalties was calculated or otherwise arrived at.* Plaintiff
23 calculated the agreed-upon amount of civil penalties by considering the risks outlined above and
24 that the Settlement already provides substantial payments for the Labor Code violations that the
25 civil penalties claim is predicated on.

26 66. *CMO dated September 11, 2024, § G(9)(b)(vi): PAGA Penalties: Any facts that*
27 *tend to suggest that the imposition of the total amount of statutory penalties for which the*
28 *defendant would be likely to be found liable at trial would be unjust, arbitrary and*



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

7 67. This uncertainty increases Plaintiff’s risk of pursuing the PAGA claims and
8 required a significant discount for settlement purposes. For mediation purposes, Plaintiff’s
9 counsel estimated a maximum exposure of approximately \$514,800.00 in civil penalties. This
10 estimate did not take into account any of the risks discussed above and assumed a violation for
11 every single pay period. Plaintiff’s counsel also assessed multiple penalties for the same pay
12 period for the same alleged violations of different Labor Code provisions and derivative
13 violations. Although two federal district court decisions held that “stacking” PAGA penalties in
14 this fashion may be appropriate to determine the amount in controversy for purposes of removal
15 jurisdiction, Plaintiff’s counsel is not aware of any California state courts awarding plaintiffs
16 multiple PAGA penalties for the same violation for the same pay period under different Labor
17 Code provisions. This may be because the PAGA does not provide for what many employers
18 characterize as claim splitting and not merely stacking.

19 68. I am aware of only two significant awards under the PAGA in a contested
20 proceeding, both issued by federal district courts.⁹ PAGA penalty awards are often small even for
21

22 ⁹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
23 penalties under the PAGA of \$12,277,500.00 where the total adjusted damages were
24 \$18,695,692.58. In this regard, the district court stated,

25 The plain language of PAGA provides that “a court may award a lesser amount than the
26 maximum civil penalty amount specified by this part if, *based on the facts and*
27 *circumstances of the particular case*, to do otherwise would result in an award that is
28 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’



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egregious, intentional violations of the Labor Code.¹⁰

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

70. ***CMO dated September 11, 2024, § G(9)(b)(viii): PAGA Penalties: Any other factors that are material to a determination that the amount of the agreed-upon penalties is fair.*** I have outlined all factors relevant to the PAGA provisions of the Settlement above.

71. **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). 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 – 55

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 Defendant's failures to comply with the requirements of California Labor Code section 226.

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



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1 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may
2 not have a sufficient number of employees to represent. This led to a significant reduction of
3 claim value in settlement negotiations.

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

16 73. ***CMO dated September 11, 2024, § G(3)(a)(iii), The Motion in General, The***
17 ***motion shall be supported by a declaration from the plaintiffs attorney that, inter alia: Sets***
18 ***forth: (A) the attorney's estimate as to each claim of the total amount of damages, monetary***
19 ***penalties or other relief that the class could reasonably expect to be awarded at trial, taking***
20 ***into account difficulties of proof, the defendant's defenses, and other attendant risks; (B)***
21 ***the attorney's reasons for those estimates; (C) and the likely award at trial for all claims***
22 ***collectively.*** Based on the difficulties of proof, the Defendants' defenses, and the other
23 attendant risks I identify above, I estimate the likely awards at trial should Plaintiff prevail
24 to be the following amounts:

- 25 a. Unpaid wages with interest in the amount of \$16,291.88;
- 26 b. Meal period premium wages with interest in the amount of \$41,889.12;
- 27 c. Rest period premium wages with interest in the amount of \$41,889.12;
- 28 d. Unreimbursed expenses with interest in the amount of \$4,198.07;



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- e. Statutory pay stub penalties in the amount of \$27,705.00;
- f. Waiting time penalties in the amount of \$54,366.48; and
- g. Civil penalties in the amount of \$154,440.00.

The total of these amounts is \$340,779.67. The Gross Settlement Amount of \$200,000.00 is 58.69% of this amount.

Allocation of the PAGA Payment

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

Attorneys' Fees and Costs

75. I intend to request Class Counsel Attorneys' Fees of \$66,666.66 (one-third of the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$9,226.89 and will be no more than \$20,000.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles



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

76. The amount of fees and costs requested is commensurate with (1) the risk Class

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

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

14 ***Class Representative Service Payment***

15 78. The Settlement provides that Plaintiff may seek a Class Representative Service
16 Payment of \$10,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action
17 and the risks she undertook on behalf of Class Members. Here, Plaintiff has devoted many hours
18 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
19 retaining experienced counsel, providing them with information about her work history with
20 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
21 issue, assisting counsel in identifying witnesses, participating in mediation, and being actively
22 involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In
23 doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay
24 Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§
25 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class show
26 that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and
27 thus warrant preliminary approval. Plaintiff Arlene Apodaca's declaration, filed concurrently with
28 mine, provides further information supporting her request for the Class Representative Service



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1 Payment.

2 79. Plaintiff began her investigation and retention of attorneys to pursue the claims at
3 issue on approximately January 18, 2024. Awarding Plaintiff 5.00% of the GSA is entirely
4 reasonable given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In
5 this case, Plaintiff has devoted several hours of her time advancing the interests of the Class
6 Members and also expects to devote additional hours of her time with Class Counsel overseeing
7 the administration of the Settlement if the Court grants final approval of the Settlement. *See*
8 *generally* Declaration of Arlene Apodaca. Plaintiff has done this by, among other things, retaining
9 experienced counsel, providing them with extensive information about her work history with
10 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
11 issue, participating in mediation, foregoing pursuit of her individual claims in favor of a fair class-
12 wide resolution, and being actively involved in the settlement process to ensure a fair result for
13 the Class Members as a whole.

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



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

- a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist. March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be paid by employee for employee's unsuccessful suit for unpaid bonuses). A true and correct copy of the court's order is attached to this declaration as **Exhibit 10**.
- b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov. 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney's fees and costs to employer for unsuccessful suit for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 11**.
- c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb. 18, 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs to the employer for unsuccessful suit for unpaid wages and overtime). A true and correct copy of the court's order is attached to this declaration as **Exhibit 12**.
- d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay \$21,180 in attorney's fees and \$1,525.80 in costs to defense counsel for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 13**.

Such costs awards are higher than the share of the Net Settlement Amount ("NSA") that Plaintiff



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stands to receive as a Participating Class Member. It is unfair in view of the substantial risk of an adverse fee or cost award of several thousand dollars that Plaintiff receives less as a reward for taking such a risk. Moreover, we cannot lose sight of the fact that Plaintiff is not a high wage earner. Even the lowest of the cost awards listed above would have devastating consequences for Plaintiff in view of her modest earnings.

82. Plaintiff's individual share of the Net Settlement Amount will be less than that of some absent Participating Class Members. Under the Settlement, Participating Class Members will receive a *pro rata* distribution of the Settlement proceeds proportionate to the period of time he or she worked for Defendants during the Class Period, compared to the total of the total period of time worked by all Participating Class Members during the Class Period, as reflected by Defendants' records. Plaintiff estimates that there are 1,272 Work Weeks for the Class Period. So, each Work Week has a value of approximately \$72.59 ($\$92,333.34 \text{ Net Settlement Amount} / 1,272 \text{ Work Weeks} = \$72.59$). Plaintiff had 8 Work Weeks during the Class Period. Based on this, it is anticipated that Plaintiff Arlene Apodaca will receive an Individual Class Payment of approximately \$580.71 as a Participating Class Member ($8 \text{ Work Weeks} \times \$72.59 = \$580.71$) while the average estimated Individual Class Payment to Participating Class Members will be approximately \$1,678.79 ($\$92,333.34 \text{ Net Settlement Amount} / 55 \text{ Class Members} = \$1,678.79$). Some Class Members – those who worked more Work Weeks during the Class Period - will receive more, and some less. The highest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for all Work Weeks in the Class Period) will be approximately \$24,829.85. The lowest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for only one Work Week in the Class Period) will be approximately \$72.59. Some Class Members – those who worked more Work Weeks during the Class Period - will receive more, and some less. Because Plaintiff may have been employed for a shorter period during the Class Period, some Class Members will have worked more Work Weeks than Plaintiff and, as a result, receive larger shares in the recovery – *even though they did not actively participate in the lawsuit*. While this is a risk that Plaintiff assumed when she brought her lawsuit, it is unfair to limit Plaintiff's Class Representative Service Payment to an amount not



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1 much greater than an absent Class Members' share of the recovery. To encourage employees like
2 Plaintiff to don the helm of class champions (and thereby advance the important public policies
3 behind class actions), the Court should award something substantial to Plaintiff for her readiness
4 to receive less than absent Class Members while assuming all the risk and delay of payment.

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

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

20 85. Plaintiff faced the risk that she could face worsened career prospects for suing a
21 former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.
22 *See generally* Declaration of Arlene Apodaca. Because she filed a lawsuit in the California
23 Superior Court, a public record now exists that Plaintiff sued her employer for Labor Code
24 violations – a fact that won't be lost on prospective employers considering her for a job. Common
25 sense dictates that an employer will think twice about hiring someone who sued her last employer.
26 Legal experts have recognized this fact. Attached to this declaration as **Exhibit 14** is a true and
27 correct copy of the article "Employees: Better Think Twice Before Suing Your Employer (Four
28 Reasons Why)." Attached to this declaration as **Exhibit 15** is a true and correct copy of the article

1 “What To Expect If You Sue Your Employer.” California even has laws to address this risk:
2 Labor Code § 1102.5 prohibits retaliation against employees who speak up about Labor Code
3 violations and Labor Code § 98.6 prohibits discrimination against employees who bring Labor
4 Code violations to the attention of the Labor Commissioner. Thus, the risk to Plaintiff’s future
5 employment shows that the Class Representative Service Payment sought is fair, adequate, and
6 reasonable, and warrants final approval of the Court.

7 86. Class Counsel depended on Plaintiff’s input to prosecute this lawsuit. Plaintiff
8 made this case possible for a number of reasons. First, Plaintiff challenged her employers on an
9 unlawful practice that led to Defendants paying a large percentage of the unpaid wages in question
10 plus interest to the remainder of their employees. Plaintiff provided Class Counsel with detailed
11 descriptions of how Defendants’ business operates, the hours and scheduling of employees, and
12 the nature of the work Class Members performed. *See generally* Declaration of Arlene Apodaca.

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

18 88. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
19 were significant risks (outlined in the preliminary approval motion) to any award on behalf of the
20 Class Members and still Plaintiff achieved a settlement of \$200,000.00. This outstanding result
21 calls for significant awards to Plaintiff for making the result possible.

22 89. ***CMO dated September 11, 2024, § G(3)(a)(iv), The Motion in General, The***
23 ***motion shall be supported by a declaration from the plaintiffs attorney that, inter alia: Sets***
24 ***forth the attorney's estimate of the recovery by the average class member, exclusive of any***
25 ***amounts payable under the settlement of any PAGA claim, if the settlement were approved.***
26 ***If the recovery by different class members will vary, the attorney shall also estimate the***
27 ***range (high and low) of possible recoveries.*** A true and correct copy of my spreadsheet
28 outlining the anticipated division of the settlement funds is attached as **Exhibit 16.**



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1 Defendants estimate that there are 1,272 Work Weeks for the Class Period. So, each Work Week
2 has a value of approximately \$72.59 ($\$92,333.34 \text{ Net Settlement Amount} / 1,272 \text{ Work Weeks} =$
3 $\$72.59$). Plaintiff had 8 Work Weeks during the Class Period. Based on this, it is anticipated that
4 Plaintiff Arlene Apodaca will receive an Individual Class Payment of approximately \$580.71 as
5 a Participating Class Member ($8 \text{ Work Weeks} \times \$72.59 = \$580.71$) while the average estimated
6 Individual Class Payment to Participating Class Members will be approximately \$1,678.79
7 ($\$92,333.34 \text{ Net Settlement Amount} / 55 \text{ Class Members} = \$1,678.79$). Some Class Members –
8 those who worked more Work Weeks during the Class Period - will receive more, and some less.
9 The highest possible Individual Class Payment to a Participating Class Member (i.e., to those who
10 qualify for all Work Weeks in the Class Period) will be approximately \$24,829.85. The lowest
11 possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for
12 only one Work Week in the Class Period) will be approximately \$72.59.

13 90. Plaintiff outlines the anticipated average, high, and low Individual Class Payment
14 values above, along with Plaintiff's anticipated Individual Class Payment.

15 91. At \$15.68 per hour (the average Class Member's hourly wage), the average
16 estimated Individual Class Payment to Participating Class Members is the equivalent of over 107
17 hours of unpaid wages (the primary remedies sought) ($\$1,678.79 / \$15.68 = 107.07 \text{ hours}$). Thus,
18 this is a result the Class can be proud of in view of the significant risks.

19 92. ***CMO dated September 11, 2024, § G(3)(a)(v), The Motion in General, The***
20 ***motion shall be supported by a declaration from the plaintiffs attorney that, inter alia: Sets***
21 ***forth the attorney's estimate of the recovery by the individual aggrieved employees under***
22 ***the proposed settlement of any PAGA claim.*** I estimate that Plaintiff's Individual PAGA
23 Payment, her individual share of 25% of the PAGA Penalties, will be less than that of some absent
24 Aggrieved Employees. Under the Settlement, each Aggrieved Employee will receive a *pro rata*
25 distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she
26 had with Defendants during the PAGA Period, compared to the total of all paychecks of all
27 Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Defendants
28 estimate that there are 936 Aggrieved Employee paychecks for the PAGA Period. So, each



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1 Aggrieved Employee paycheck from the PAGA Period has a value of approximately \$1.34 (25%
2 of \$5,000.00 in PAGA Penalties / 936 Aggrieved Employee paychecks = \$1.34). It is anticipated
3 that Plaintiff Arlene Apodaca will receive an Individual PAGA Payment of approximately \$10.68
4 as an Aggrieved Employee (8 paychecks during the PAGA Period x \$1.34 paycheck value =
5 \$10.68) while the average estimated Individual PAGA Payment to an Aggrieved Employee will
6 be approximately \$50.00 (\$1,250.00, 25% of PAGA Penalties / 25 Aggrieved Employees =
7 \$50.00 Individual PAGA Payment). Some Aggrieved Employees – those who had more
8 paychecks during the PAGA Period - will receive more, and some less. The highest possible
9 Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks
10 in the PAGA Period) will be approximately \$248.48. The lowest possible Individual PAGA
11 Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the PAGA
12 Period) will be approximately \$1.34.

13 *Individual Class Payment*

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

19 *Proposed Preliminary Approval Order*

20 94. Plaintiff will file a proposed Preliminary Approval Order with this declaration.

21 95. ***CMO dated September 11, 2024, § G(4)(a): The Proposed Order: The motion***
22 ***shall be accompanied by a separate proposed order which shall include, as attachments to***
23 ***the order, the proposed notice (Cal. Rules of Court, rule 3.769(e)), proposed exclusion form,***
24 ***proposed objection form, any proposed claim form, and any other form that is proposed to***
25 ***accompany the notice. The Court is likely to modify those proposed forms. Therefore, the***
26 ***Court will not issue an order that merely incorporates by reference the forms attached to***
27 ***the settlement agreement.*** The proposed Preliminary Approval Order includes the Notice
28 Packet. The Notice Packet consists of the Class Notice (Exhibit A to the Preliminary Approval



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Order), the Election Not to Participate in Settlement form (Exhibit B to the Preliminary Approval Order), the Work Week Dispute form (Exhibit C to the Preliminary Approval Order), and the Objection form (Exhibit D to the Preliminary Approval Order). The Notice Packet will be sent to the Class Members in English with Spanish translations. The Notice Packet does not include any other forms.

96. ***CMO dated September 11, 2024, § G(4)(b): The Proposed Order: The settlement agreement shall not be attached to the order.*** The Settlement Agreement is not attached to the proposed Preliminary Approval Order.

97. ***CMO dated September 11, 2024, § G(4)(c): The Proposed Order: Counsel shall carefully review both the terms and the terminology of the order and accompanying forms (notice, objection form, exclusion form, and any claim form) to confirm that the various documents are internally consistent, consistent with each other, and consistent with the settlement agreement.*** I have carefully reviewed both the terms and the terminology of the proposed Preliminary Approval Order and accompanying Notice Packet to confirm that the various documents are internally consistent, consistent with each other, and consistent with the Settlement Agreement.

98. ***CMO dated September 11, 2024, § G(4)(d): The Proposed Order: The order shall state the name of any settlement administrator, and shall describe the nature of the services that the administrator will be required to perform, either directly or by reference to the settlement agreement.*** The proposed Preliminary Approval Order states the name of the Administrator, and describes the nature of the services that the Administrator will be required to perform, either directly or by reference to the Settlement Agreement.

99. ***CMO dated September 11, 2024, § G(4)(e): The Proposed Order: The order shall provide that the notice shall be accompanied by an exclusion form that the class members may use. The order shall provide that any exclusion form shall be submitted to the settlement administrator rather than filed with the court. The order shall not require the class member to send copies of the exclusion form to counsel, but may require the settlement administrator to do so. The order shall provide that the settlement administrator***



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1 *shall file a declaration concurrently with the filing of any motion for final approval,*
2 *authenticating a copy of every exclusion form received by the administrator.* The proposed
3 Preliminary Approval Order provides that the Class Notice shall be accompanied by the
4 Election Not to Participate in Settlement form (Exhibit B to the Preliminary Approval Order), the
5 Work Week Dispute form (Exhibit C to the Preliminary Approval Order), and the Objection form
6 (Exhibit D to the Preliminary Approval Order) in English with Spanish translations. The
7 proposed Preliminary Approval Order provides that any exclusion form shall be submitted to
8 the Administrator rather than filed with the Court. The proposed Preliminary Approval Order
9 does not require the Class Member to send copies of the exclusion form to counsel, but
10 requires the Administrator to do so. The proposed Preliminary Approval Order provides that
11 the Administrator shall file a declaration concurrently with the filing of Plaintiff's motion for
12 final approval authenticating a copy of every exclusion form received by the Administrator.

13 100. *CMO dated September 11, 2024, § G(4)(f): The Proposed Order: The*
14 *proposed order shall provide that the notice shall be accompanied by an objection form*
15 *that the class members may use. The order shall provide that any objection shall be*
16 *submitted to the settlement administrator rather than filed with the court. The order shall*
17 *not require the class member to send copies of the objection form to counsel, but may*
18 *require the settlement administrator to do so. The order shall provide that the settlement*
19 *administrator shall file a declaration concurrently with the filing of any motion for final*
20 *approval, authenticating a copy of every objection form received by the administrator.* The
21 proposed Preliminary Approval Order provides that the Class Notice shall be accompanied
22 by the Objection form that the Class Members may use. The proposed Preliminary Approval
23 Order provides that any objection shall be submitted to the Administrator rather than filed
24 with the Court. The proposed Preliminary Approval Order does not require the Class Member
25 to send copies of the objection form to counsel, but requires the Administrator to do so. The
26 proposed Preliminary Approval Order provides that the Administrator shall file a declaration
27 concurrently with the filing of the motion for final approval with a copy of every objection
28 form received by the administrator.



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101. *CMO dated September 11, 2024, § G(4)(g)(i): The Proposed Order: Neither the order, the notice, nor the objection form shall require an objecting party to do either of the following, either personally or through counsel: To appear at the hearing on the motion for final approval for that party's objection to be considered.* Neither the proposed Preliminary Approval Order, the Class Notice, nor the Objection form require an objecting party to, either personally or through counsel, appear at the hearing on the motion for final approval for that party's objection to be considered.

102. *CMO dated September 11, 2024, § G(4)(g)(ii): The Proposed Order: Neither the order, the notice, nor the objection form shall require an objecting party to do either of the following, either personally or through counsel: To file or serve, or to state in the objection, a notice of intention to appear at the hearing on the motion for final approval.* Neither the proposed Preliminary Approval Order, the Class Notice, nor the Objection form require an objecting party to, either personally or through counsel, to file or serve, or to state in the objection, a notice of intention to appear at the hearing on the motion for final approval.

103. *CMO dated September 11, 2024, § G(4)(h): The Proposed Order: The order shall provide a proposed date for the Final Approval Hearing. The order shall require that either counsel or the administrator must give notice to any objecting party of any continuance of the hearing of the motion for final approval.* The proposed Preliminary Approval Order provides a proposed date for the Final Approval Hearing. The proposed Preliminary Approval Order requires Plaintiff or the Administrator to give notice to any objecting party of any continuance of the hearing of the motion for final approval.

104. *CMO dated September 11, 2024, § G(4)(i): The Proposed Order: Neither the order nor the notice shall purport to enjoin the class members from filing any actions or administrative claims or proceedings pending the final hearing on the settlement, or for any other period.* Neither the proposed Preliminary Approval Order nor the Class Notice purports to enjoin the Class Members from filing any actions or administrative claims or proceedings pending the final hearing on the settlement, or for any other period.

105. *CMO dated September 11, 2024, § G(4)(j): The Proposed Order: If notice is*

1 *to be given by mail, and if the class members will be required to submit a claim form, the*
2 *order shall provide: (i) That the notice be accompanied by a stamped envelope addressed to*
3 *the claims administrator; and (ii) That the claims administrator be required to send a*
4 *reminder notice to every class member from whom no claim or exclusion request is received*
5 *within 30 days of mailing the notice.* The Settlement does not require a claim form.

6 *The Notice Packet*

7 106. *CMO dated September 11, 2024, § G(3)(f): The Motion in General: If notice*
8 *is not to be given by first class mail to addresses believed to be current, the motion shall*
9 *discuss the proposed method of giving notice, the alternative methods considered, and the*
10 *reasons that the proposed method is the one most likely to give actual notice to the greatest*
11 *number of class members.* The Settlement requires distribution of the Notice by First Class U.S.
12 mail only. Settlement, ¶ 5.4.2. Although there are current employee Class Members, it is uncertain
13 whether Defendants' records of their contact information include email addresses and Class
14 Members, who perform all of their work away from a desk, are not in a position to check their
15 emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet
16 (attached as Exhibits A, B, C, and D to the Settlement) provides Class Members with all pertinent
17 information that they need to fully evaluate their options and exercise their rights under the
18 Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the
19 Settlement is about; (2) who is a Settlement Class Member ; (3) how Class Counsel will be paid;
20 (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to
21 the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members
22 will be calculated; (8) how the disputes will be resolved; and (9) the estimated settlement shares
23 for each Class Member . Additionally, the Notice will include the number of eligible Work Weeks
24 a Class Member had during the Class Period. Accordingly, the Notice should be approved because
25 it describes the Settlement with sufficient clarity and specificity to explain to Class Members what
26 this action is about, their rights under the Settlement, and how to exercise those rights. As such,
27 the Parties' proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f)
28 and will allow Class Members to make informed responses to the proposed settlement.



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107. *CMO dated September 11, 2024, § G(3)(g): The Motion in General: If the settlement requires any of the class members to submit claims, the motion shall explain why a claim process is reasonably necessary. If the defendant knows (A) the identity of the class members, (B) their addresses or former addresses, and (C) the facts necessary to calculate the recovery of each class member, the Court will require a strong showing of necessity for a claims process.* The Settlement does not require Class Members to submit claims to participate.

108. *CMO dated September 11, 2024, § G(3)(k)(i): The Motion in General: The documents that will be read by or used by the class members - the proposed notice, objection form, exclusion form, and any claim form - shall be drafted in a manner that is likely to be readily understood by the members of the class. In particular, they shall not contain any Latin terms (such as *et al.* and *et seq.*), any legal terms of art (such as *nonexempt* and *class certification*), or any unfamiliar symbols or abbreviations (such as \$, LLC, and IWO).* Each document in the Notice Packet is drafted in a manner that is likely to be readily understood by the members of the Class. The Notice Packet does not contain any Latin terms, legal terms of art, or unfamiliar symbols or abbreviations.

109. *CMO dated September 11, 2024, § G(3)(k)(ii): The Motion in General: To assist the Court in determining whether those documents comply with that directive, the motion shall be supported by a declaration of the defendant on personal knowledge concerning the likely age, education, and experience of the class members, and of their ability to read and comprehend English.* A true and correct copy of the declaration of Thomas Vartanian, Defendants R And T Oil Incorporated's Vice President, is filed concurrently with this declaration. Thomas Vartanian's declaration states based on personal knowledge, the likely age, education, and experience of the Class Members, and of their ability to read and comprehend English. *Id.*, Declaration of Thomas Vartanian at ¶ 6. A true and correct copy of the declaration of Rafi Bartaniyan, Defendants R And T Oil Incorporated's Chief Executive Officer, is filed concurrently with this declaration. Rafi Bartaniyan's declaration states based on personal knowledge, the likely age, education, and experience of the Class Members, and of their



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1 ability to read and comprehend English. *Id.*, Declaration of Rafi Bartaniyan at ¶ 6.

2 110. **CMO dated September 11, 2024, § G(5)(a): The Proposed Notice: The notice**
3 ***shall include an estimate of the likely recovery by the individual class member to whom the***
4 ***notice is sent, if known. If it is not known, the notice shall include an estimate of the likely***
5 ***recovery by the average class member. If the recovery by different members will vary, the***
6 ***notice shall also include an estimate of the range of possible recoveries.*** As stated above,
7 the Class Notice includes an estimate of the likely recovery by the individual Class Member.
8 It also provides the estimated dollar value of a Work Week and the estimated dollar value of a
9 Pay Period and the notice shall also include an estimate of the range of possible recoveries.

10 111. **CMO dated September 11, 2024, § G(5)(b): The Proposed Notice: To avoid**
11 ***discouraging any dissenting class members from objecting to the proposed settlement, the***
12 ***notice shall clearly indicate that the Court has determined only that there is sufficient***
13 ***evidence to suggest that the proposed settlement might be fair, adequate, and reasonable,***
14 ***and that any final determination of those issues will be made at the final hearing.*** The Class
15 Notice states that the Court has determined only that there is sufficient evidence to suggest
16 that the proposed settlement might be fair, adequate, and reasonable, and that any final
17 determination of those issues will be made at the final hearing.

18 112. **CMO dated September 11, 2024, § G(5)(c): The Proposed Notice: The notice**
19 ***shall advise the class members of where they can find the settlement agreement, by***
20 ***describing (i) the full title and filing date either of the settlement agreement or of the***
21 ***declaration or other document to which the agreement was attached when filed with the***
22 ***Court, (ii) the address of the courthouse to which the case is assigned, and (iii) the address***
23 ***of the court's website at which the case file can be viewed on-line.*** The Class Notice advises
24 the Class Members of where they can find the Settlement Agreement. The Class Notice also
25 states the address of the courthouse to which the case is assigned, and the address of the court's
26 website at which the case file can be viewed on-line.

27 113. **CMO dated September 11, 2024, § G(5)(d): The Proposed Notice: Neither the**
28 ***notice nor the documents enclosed with it shall describe any settlement administrator as***

1 *the "claims administrator" unless the class members are required to submit claims. Only*
2 *the term "Administrator" is used.*

3 114. *CMO dated September 11, 2024, § G(5)(e): The Proposed Notice: The notice*
4 *shall include a description of any release being given by the class members. The Class Notice*
5 *describes the releases by Plaintiff and the Class Members.*

6 115. *CMO dated September 11, 2024, § G(5)(f): The Proposed Notice: If the action*
7 *includes a claim for statutory penalties under PAGA, the notice shall explain what PAGA*
8 *is and advise class members/aggrieved employees that they may neither object to nor opt*
9 *out of the PAGA settlement. The Notice shall also describe the terms of the settlement of*
10 *the PAGA claim, including who is an aggrieved employee and shall provide an estimate of*
11 *the individual aggrieved employee's share of the penalties and advise aggrieved employees*
12 *that the payments will be reported on a Form 1099. The lawsuit includes a claim for civil*
13 *penalties under PAGA. The Class Notice defines PAGA. It states that Class Members may*
14 *not opt out of the PAGA provisions of the Settlement. The Class Notice also describes the*
15 *terms of the settlement of the PAGA claim, including who is an Aggrieved Employee. The*
16 *Class Notice provides an estimate of the individual Aggrieved Employee's share of 25% of*
17 *the PAGA Penalties and advises Aggrieved Employees that the payments will be reported on*
18 *a Form 1099.*

19 116. *CMO dated September 11, 2024, § G(6): The Proposed Claim Form: The*
20 *information required to be provided by the class member on any claim form shall not exceed*
21 *the minimum information necessary to (a) identify the claimant, (b) process the claim, and*
22 *(c) contact the claimant to clarify any uncertainties. As stated above, there is no claim form.*

23 117. *CMO dated September 11, 2024, § G(7)(a): The Proposed Objection Form:*
24 *The objection form shall (i) instruct the objecting class member that the objection must be*
25 *mailed or delivered to the settlement administrator, (ii) state the name and address of the*
26 *settlement administrator, and (iii) state the date by which the objection must be mailed or*
27 *otherwise delivered. The Objection form instructs the objecting Class Member that the*
28 *objection must be delivered to the Administrator. The Objection form states the name and*



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address of the Administrator. It also states the date by which the objection must be mailed or otherwise delivered.

118. ***CMO dated September 11, 2024, § G(7)(b): The Proposed Objection Form:***
The information required to be provided by an objecting class member on the objection form shall not exceed the minimum information necessary to (i) identify the objector as a person entitled to object to the settlement, (ii) describe the nature of and basis for the objection, and (iii) contact the objector to clarify any uncertainties. The information required to be provided by an objecting Class Member on the Objection form does not exceed the minimum information necessary to (i) identify the objector as a person entitled to object to the Settlement, (ii) describe the nature of and basis for the objection, and (iii) contact the objector to clarify any uncertainties.

119. ***CMO dated September 11, 2024, § G(7)(c): The Proposed Objection Form: If a claim must be submitted to participate in the settlement, the objection form shall remind the objector that, to participate in the settlement in the event that the objection is overruled, the objector must also submit a claim.*** As stated above, no claim form is required.

120. ***CMO dated September 11, 2024, § G(8)(a): The Proposed Exclusion Form:***
The exclusion form shall (i) instruct the Class Member seeking exclusion that the exclusion form must be mailed or delivered to the settlement administrator, (ii) state the name and address of the settlement administrator, and (iii) state the date by which the exclusion form must be mailed or otherwise delivered. The Election Not To Participate form (i) instructs the Class Member seeking exclusion that the exclusion form must be mailed or delivered to the Administrator, (ii) states the name and address of the Administrator, and (iii) states the date by which the exclusion form must be mailed or otherwise delivered.

121. ***CMO dated September 11, 2024, § G(8)(b): The Proposed Exclusion Form:***
The information required to be provided by a class member on the exclusion form shall not exceed the minimum information necessary to (i) identify the person as a class member and (ii) contact the person to clarify any uncertainties. The information required to be provided by a Class Member on the Election Not To Participate form does not exceed the minimum



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1 information necessary to (i) identify the person as a Class Member and (ii) contact the person
2 to clarify any uncertainties.

3 122. *CMO dated September 11, 2024, § G(8)(c): The Proposed Exclusion Form:*
4 *The exclusion form shall indicate that exclusion from the class settlement will not result in*
5 *exclusion from any PAGA settlement.* The Election Not To Participate form indicates that
6 exclusion from the Class Settlement will not result in exclusion from the PAGA portion of the
7 Settlement.

8 *Settlement Administration Duties*

9 123. *CMO dated September 11, 2024, § G(3)(d)(ii)(B): The Motion in General: If*
10 *the settlement contemplates the use of an administrator to implement the terms of the*
11 *settlement, the motion shall be supported by: A declaration from the administrator*
12 *describing: The fee to be charged by the administrator to perform the services described in*
13 *the settlement agreement and proposed order.* The duties of the Settlement Administrator are
14 spelled out in section III(C) of the Settlement and in the bid provided by Apex Class Action
15 Administration a true and correct copy of which is attached hereto as **Exhibit 17**.

16 *Settlement Administration Costs*

17 124. *CMO dated September 11, 2024, § G(3)(d)(i): The Motion in General: If the*
18 *settlement contemplates the use of an administrator to implement the terms of the*
19 *settlement, the motion shall be supported by: A declaration from the plaintiff's attorney,*
20 *stating whether bids were sought from multiple potential administrators and, if so, the*
21 *results of that competitive bidding. If the parties did not select the lowest bidder, the*
22 *declaration shall explain that decision.* With regard to the settlement administration costs
23 provision, it is reasonable. Before agreeing to Apex Class Action Administration the Parties
24 sought and reviewed bids from other reputable third-party administrators: (A) ILYM Group, Inc.
25 = \$6,350.00 and (B) Phoenix Class Action Administration Solutions = \$5,000.00. A true and
26 correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 18**. A true and correct
27 copy of the bid from Phoenix Class Action Administration Solution is attached hereto as **Exhibit**
28 **19**. The bid provided by Apex Class Action Administration was the lowest. Thus, the settlement



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administration costs provision should be given preliminary approval.

125. **CMO dated September 11, 2024, § G(3)(d)(ii)(A): The Motion in General: If the settlement contemplates the use of an administrator to implement the terms of the settlement, the motion shall be supported by: A declaration from the administrator describing: The administrator's experience.** The declaration of Mike Sutherland of Apex Class Action Administration, to be filed concurrently with my declaration, describes Apex Class Action Administration's experience.

126. **CMO dated September 11, 2024, § G(3)(d)(ii)(B): The Motion in General: If the settlement contemplates the use of an administrator to implement the terms of the settlement, the motion shall be supported by: A declaration from the administrator describing: The fee to be charged by the administrator to perform the services described in the settlement agreement and proposed order.** The declaration of Mike Sutherland of Apex Class Action Administration, to be filed concurrently with my declaration, describes the fees to be charged. The fees are also stated in the bid provided by Apex Class Action Administration a true and correct copy of which is attached hereto as **Exhibit 17**.

127. **CMO dated September 11, 2024, § G(3)(d)(ii)(C): The Motion in General: If the settlement contemplates the use of an administrator to implement the terms of the settlement, the motion shall be supported by: A declaration from the administrator describing: Whether that fee is (1) fixed, (2) hourly, or (3) hourly with a cap.** The declaration of Mike Sutherland of Apex Class Action Administration explains that Apex Class Action Administration's fee is capped.

128. **CMO dated September 11, 2024, § G(3)(d)(ii)(D): The Motion in General: If the settlement contemplates the use of an administrator to implement the terms of the settlement, the motion shall be supported by: A declaration from the administrator describing: How the fee was calculated.** The declaration of Mike Sutherland of Apex Class Action Administration explains how Apex Class Action Administration calculated its bid.

PAGA Provisions of the Settlement

129. **CMO dated September 11, 2024, § G(9)(a): PAGA Penalties: If the action**



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1 *includes a claim for statutory penalties under PAGA, the motion shall explain the terms of*
2 *any settlement of that claim.* The memorandum of points and authorities that accompanies this
3 declaration explains the terms of the provisions of the Settlement that apply to PAGA and civil
4 penalties.

5 130. *CMO dated September 11, 2024, § G(9)(c): PAGA Penalties: All PAGA*
6 *penalties shall be distributed among all aggrieved employees, even those who opt out of the*
7 *class settlement.* The Settlement provides that 25% of the PAGA Penalties shall be distributed
8 among all Aggrieved Employees, even those who opt out of the Class Settlement. See Settlement,
9 ¶ 3.2.5.

10 131. *CMO dated September 11, 2024, § G(9)(d)(i): PAGA Penalties: Any release of*
11 *claims for PAGA penalties: Shall bind only the named plaintiff and the State of California.*

12 The Settlement states as follows with regard to the release of the PAGA claim:

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

18 132. *CMO dated September 11, 2024, § G(9)(d)(ii): PAGA Penalties: Any release*
19 *of claims for PAGA penalties: Shall release only the defendant named in the complaint,*
20 *together with its officers, directors, employees and agents. If any other parties are sought*
21 *to be released, the motion shall both (i) identify those other parties by name and (ii) explain*
22 *the facts that justify their inclusion.* The PAGA Release is limited to Defendants named in
23 the Operative Complaint, together with Defendants' officers, directors, employees and
24 agents. See Settlement, ¶ 1.4.2 ("Released Parties").

25 133. *CMO dated September 11, 2024, § G(9)(d)(iii), (vi): PAGA Penalties: Any*
26 *release of claims for PAGA penalties: Shall release only those claims described in the notice*
27 *sent by the plaintiff to the LWDA, and only to the extent that they are alleged in the*
28 *complaint. An example of an acceptable release is as follows: "Plaintiff releases all claims*
for statutory 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 any



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1 *aggrieved employee's claim for wages or damages."* The Settlement states:

2
3 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that could have
4 been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-
5 filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of
any Aggrieved Employee unless such Aggrieved Employee is a Participating Class
Member.

6 Settlement, ¶ 6.3.

7 *Notice of Settlement to the LWDA*

8 134. Pursuant to Labor Code § 2699(1)(2), Plaintiff has provided notice of this
9 settlement to the LWDA with the filing and service of this motion. A true and correct copy of
10 Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 20**.

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

13 Executed on Friday, September 18, 2026 at New York, New York.

14
15 

16 DAVID SPIVAK,
17 Declarant



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EXHIBIT 1

1 DAVID GLENN SPIVAK (SBN 179684)
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2 CAROLINE TAHMASSIAN (SBN 285680)
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3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
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6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 ARLENE APODACA, 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 RIVERSIDE**
12 **(UNLIMITED JURISDICTION)**

13 ARLENE APODACA, on behalf of herself and
14 all others similarly situated, and the general
15 public, and as an “Aggrieved Employee” on
16 behalf of other “Aggrieved Employees” and the
State of California under the Private Attorneys
General Act of 2004,

17 *Plaintiff,*

18 vs.

19 R AND T OIL INCORPORATED, a California
20 corporation; RAFI BARTANIYAN, an
21 individual; THOMAS VARTANIAN, an
individual; and DOES 1–50, inclusive,
22 *Defendants.*

Case No. CVRI2402196

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

Action filed: April 19, 2024
Dept: Dept. 1, The Honorable
Harold W. Hopp

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ATTORNEYS FOR DEFENDANTS

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1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between Plaintiff Arlene Apodaca (“Plaintiff”) and defendants R And T Oil Incorporated, Rafi
3 Bartaniyan, and Thomas Vartanian (collectively “Defendants”). The Agreement refers to Plaintiff
4 and Defendants collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Defendants captioned “Arlene Apodaca, on behalf of herself, and all others similarly situated, and
8 the general public, and as an ‘Aggrieved Employees’ on behalf of other ‘Aggrieved Employees’
9 and the State of California under the Private Attorneys General Act of 2004, *Plaintiff*, vs. R And
10 T Oil Incorporated, a California corporation, Rafi Bartaniyan, an individual, Thomas Vartanian,
11 an individual; and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No. CVRI2402196
12 initiated on April 19, 2024 and pending in Superior Court of the State of California, County of
Riverside.

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

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

18 1.4. “Aggrieved Employee” means a person employed by Defendants in California and
19 classified as an hourly, non-exempt employee who worked for Defendants during the PAGA
20 Period.

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

23 1.6. “Class Counsel” means David Glenn Spivak and Caroline Tahmassian of The
Spivak Law Firm.

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

27 1.8. “Class Data” means Class Member identifying information in Defendants’

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

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

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

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

1.12. "Class Period" means the period from April 19, 2020 to the date of preliminary approval of this Settlement.

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

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

1.15. "Court" means the Superior Court of California, County of Riverside.

1.16. "Defendants" means named Defendants R And T Oil Incorporated, Rafi Bartaniyan, and Thomas Vartanian.

1.17. "Defense Counsel" means Peter Sunukjian and Garo Khajadourian of Briggs Alexander, APLC.

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

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

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

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

1.22. “Gross Settlement Amount” means \$200,000.00, which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s Expenses.

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

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

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

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

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

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

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

1.30. “Notice Packet” means the Class Notice (Exhibit A), the Request for Exclusion

1 form (Exhibit B), the Class Work Weeks/PAGA Pay Periods Dispute form (Exhibit C), and the
2 Objection form (Exhibit D) in English with Spanish translations.

3 1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
4 worked for Defendants for at least one day during the PAGA Period.

5 1.32. “PAGA Period” means the period from April 19, 2023 to the date of preliminary
6 approval of this Settlement.

7 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

8 1.34. “PAGA Notice” means Plaintiff’s April 19, 2024 letter to Defendants and the
9 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

10 1.35. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
11 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,250.00) and the
12 75% to LWDA (\$3,750.00) in settlement of PAGA claims.

13 1.36. “Participating Class Member” means a Class Member who does not submit a valid
14 and timely Request for Exclusion from the Settlement.

15 1.37. “Plaintiff” means Arlene Apodaca, the named Plaintiff in the Action.

16 1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
17 of the Settlement.

18 1.39. “Preliminary Approval Order” means the proposed Order Granting Preliminary
19 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
20 attached as Exhibit E.

21 1.40. “Released Class Claims” means the claims being released as described in
22 Paragraph 6.2 below.

23 1.41. “Released PAGA Claims” means the claims being released as described in
24 Paragraph 6.3 below.

25 1.42. “Released Parties” means: Defendants and each of their officers, directors,
26 employees and agents.

27 1.43. “Request for Exclusion” means a Class Member’s submission of a written request
28 to be excluded from the Class Settlement signed by the Class Member. A Request for Exclusion
form is attached as Exhibit B.

1.44. “Response Deadline” means 60 days after the Administrator mails Notice to Class
Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)

1 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
2 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
3 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
4 the Response Deadline has expired.

5 1.45. "Settlement" means the disposition of the Action effected by this Agreement and
6 the Judgment.

7 1.46. "Settlement Agreement" shall mean this Class Action and PAGA Settlement
8 Agreement and Class Notice.

9 1.47. "Work Week" means any week during which a Class Member worked for
10 Defendants for at least one day, during the Class Period.

11 1.48. A Class Work Weeks/PAGA Pay Periods Dispute form is attached as Exhibit C.

12 **2. RECITALS.**

13 2.1. On April 19, 2024, Plaintiff commenced this Action by filing a Complaint
14 alleging causes of action against Defendants for failure to pay wages, failure to provide meal
15 periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
16 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
17 payroll records, and related claims. On June 25, 2024, Plaintiff filed a First Amended Complaint
18 alleging causes of action against Defendants for failure to pay wages, failure to provide meal
19 periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
20 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
21 payroll records, and related allegations. The First Amended Complaint is the operative complaint
22 in the Action (the "Operative Complaint"). Defendants deny the allegations in the Operative
23 Complaint, deny any failure to comply with the laws identified in the Operative Complaint, and
24 deny any and all liability for the causes of action alleged.

25 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
26 notice to Defendants and the LWDA by sending the PAGA Notice.

27 2.3. On March 05, 2025, the Parties participated in an all-day mediation presided over
28 by Mr. Scott Radovich that led to this Agreement to settle the Action.

2.4. Prior to mediation and negotiating the Settlement, Plaintiff obtained, through
formal and informal discovery, sample time records, sample payroll records, and related

1 information. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set
2 forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot*
3 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

4 2.5. The Court has not granted class certification.

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

8 **3. MONETARY TERMS.**

9 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
10 Defendants promise to pay \$200,000.00 and no more as the Gross Settlement Amount and to
11 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
12 Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any
13 payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator
14 will disburse the entire Gross Settlement Amount without asking or requiring Participating Class
15 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
16 Gross Settlement Amount will revert to Defendants.

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

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

1 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 and
2 1/3%, which is currently estimated to be \$66,666.66 and a Class Counsel Litigation Expenses
3 Payment of not more than \$20,000.00. Defendants will not oppose requests for these payments
4 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
5 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
6 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
7 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
8 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
9 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
10 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
11 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
12 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
13 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
14 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
15 division or sharing of any of these Payments.

16 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
17 \$6,000.00 except for a showing of good cause and as approved by the Court. To the extent the
18 Administration Expenses are less or the Court approves payment less than \$6,000.00, the
19 Administrator will retain the remainder in the Net Settlement Amount.

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

24 3.2.4.1. Tax Allocation of Individual Class Payments. 20.00% of
25 each Participating Class Member's Individual Class Payment will be allocated to settlement of
26 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
27 reported on an IRS W-2 Form. 80.00% of each Participating Class Member's Individual Class
28 Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
employee taxes owed on their Individual Class Payment.

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

5 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
6 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
7 (\$1,250.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved
8 Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's
9 PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any
10 taxes owed on their Individual PAGA Payment.

11 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
12 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
13 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

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

15 4.1. Class Work Weeks and Aggrieved Employee Pay Periods. Based on a review of
16 their records to date, Defendants estimate there are 55 Class Members who collectively worked a
17 total of 1,272 Work Weeks, and 25 Aggrieved Employees who worked a total 936 PAGA Pay
18 Periods.

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

1 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
2 Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the
3 Effective Date. The Gross Settlement Amount does not include Defendants' share of payroll taxes
4 which Defendants shall separately pay to the appropriate taxing entities.

5 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants
6 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
7 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
8 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
9 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
10 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
11 Payment shall not precede disbursement of Individual Class Payments and individual PAGA
12 Payments. Any envelope transmitting a settlement distribution to a Class Member shall bear the
13 notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED."

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

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

1 replacement check to any Class Member whose original check was lost or misplaced, requested
2 by the Class Member prior to the void date. The Administrator shall mail a reminder postcard to
3 any Class Member whose settlement distribution check has not be negotiated within 60 days after
4 the date of mailing. If (i) any of the Class Members are current employees of the Defendants, (ii)
5 the distribution mailed to those employees is returned to the Administrator as being undeliverable,
6 and (iii) the Administrator is unable to locate a valid mailing address, the Administrator shall
7 arrange with the Defendants to have those distributions delivered to the employees at their place
8 of employment.

8 4.4.3. For any Class Member whose Individual Class Payment check or
9 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
10 shall redistribute the funds represented by such checks to those Class Members who have cashed
11 their checks. For any redistributed checks that remain uncashed or cancelled after the void date,
12 the Administrator shall transmit the funds represented by such checks to the California
13 Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no
14 "unpaid residue."

14 4.4.4. The payment of Individual Class Payments and individual PAGA
15 Payments shall not obligate Defendants to confer any additional benefits or make any additional
16 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
17 this Agreement.

17 **5. [OMITTED]**

18 **6. RELEASES OF CLAIMS.** Effective on the date when (1) Defendants fully fund the entire
19 Gross Settlement Amount and (2) provide written confirmation to Plaintiff's counsel that they have
20 paid the taxes owed on the Wage Portion of the Individual Class Payments to the appropriate tax
21 entities, Plaintiff, Class Members, and Class Counsel will release claims against all Released
22 Parties as follows:

22 6.1 Plaintiff's Release. Plaintiff and her respective former and present spouses,
23 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
24 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
25 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
26 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
27 that were, or reasonably could have been, alleged based on facts contained in the Operative

1 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.3,
2 below ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to
3 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
4 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
5 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
6 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
7 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
notwithstanding such different or additional facts or Plaintiff's discovery of them.

8 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
9 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
10 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

15 6.2 Release by Participating Class Members: All Participating Class Members, on
16 behalf of themselves and their respective former and present representatives, agents, attorneys,
17 heirs, administrators, successors, and assigns, release Released Parties from all claims stated in
18 the Operative Complaint and those based solely upon the facts alleged in the Operative
19 Complaint. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do
20 not release any other claims, including claims for vested benefits, wrongful termination, violation
21 of the Fair Employment and Housing Act, unemployment insurance, disability, social security,
22 workers' compensation, or claims based on facts occurring outside the Class Period.

23 6.3 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that
24 could have been sought by the Labor Commissioner for the violations identified in Plaintiff's
25 pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
26 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

27 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree that

1 Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary
2 Approval”) that complies with the Court’s current checklist for Preliminary Approvals. A
3 Preliminary Approval Order form is attached as Exhibit E.

4 7.1 Defendants’ Declaration in Support of Preliminary Approval. Within ten (10)
5 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel
6 a signed Declaration from Defendants and Defense Counsel. In their Declaration, Defense
7 Counsel and Defendants shall aver whether they are aware of any other pending matter or action
8 asserting claims that will be extinguished or adversely affected by the Settlement. The Declaration
9 should state (i) whether the attorney is aware of any class, representative, or other collective action
10 in any other court in this or any other jurisdiction that asserts claims similar to those asserted in
11 this action on behalf of a class or group of individuals, some or all of whom would also be
12 members of the class defined in this action, and, if they are aware of such an action, (ii) the name
13 and case number of any such case, the nature of the claims asserted, the definition of the class,
14 other parties on whose behalf the action is brought, and the procedural status of that case.
15 Defendants’ declaration shall also include a statement on Defendants’ personal knowledge
16 concerning the likely age, education, and experience of the Class Members, and of their ability to
17 read and comprehend English and whether the Notice Packet should be translated to Spanish or
18 any other languages.

19 7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
20 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
21 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
22 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
23 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
24 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
25 from the Administrator attaching its “not to exceed” bid for administering the Settlement and
26 attesting to: (a) its willingness to serve; (b) its competency; operative procedures for protecting
27 the security of Class Data; (c) the amounts of insurance coverage it maintains for any data breach,
28 defalcation of funds or other misfeasance; (d) all facts relevant to any actual or potential conflicts
of interest with Class Members; and (e) the nature and extent of any financial relationship with
Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming
her willingness and competency to serve and disclosing all facts relevant to any actual or potential

1 conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from
2 each Class Counsel firm attesting to its competency to represent the Class Members and its timely
3 transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor
4 Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)) and
5 this Agreement (Labor Code section 2699, subd. (l)(2)); (vii) a redlined version of the parties'
6 Agreement showing all modifications made to the Model Agreement ready for filing with the
7 Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members
8 and/or the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they
9 are not aware of any other pending matter or action asserting claims that will be extinguished or
adversely affected by the Settlement.

10 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
11 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
12 than 60 days after the full execution of this Agreement; obtaining a prompt hearing date for the
13 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
14 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
Approval to the Administrator.

15 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
16 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
17 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
18 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
19 Preliminary Approval or conditions Preliminary Approval on any material change to this
20 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
21 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
22 otherwise satisfy the Court's concerns as long as the proposed revisions do not increase the Gross
Settlement Amount.

23 **8. SETTLEMENT ADMINISTRATION.**

24 8.1 Selection of Administrator. The Parties have jointly selected Apex Class Action
25 Administration to serve as the Administrator and verified that, as a condition of appointment,
26 Apex Class Action Administration agrees to be bound by this Agreement and to perform, as a
27 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,

1 financial or otherwise, with the Administrator other than a professional relationship arising out of
2 prior experiences administering settlements.

3 8.2 Employer Identification Number. The Administrator shall have and use its own
4 Employer Identification Number for purposes of calculating payroll tax withholdings and
5 providing reports state and federal tax authorities.

6 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
7 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
8 Regulation section 468B-1.

9 8.4 Notice to Class Members.

10 8.4.1 No later than three (3) business days after receipt of the Class Data, the
11 Administrator shall notify Class Counsel that the list has been received and state the number of
12 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.

13 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
14 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
15 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
16 with Spanish translation, if applicable substantially in the forms attached to this Agreement as
17 **Exhibits A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar
18 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
19 Member, and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate
20 these amounts. Before mailing Notice Packets, the Administrator shall update Class Member
21 addresses using the National Change of Address database.

22 8.4.3 Not later than 3 business days after the Administrator’s receipt of any
23 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
24 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
25 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
26 the Notice Packet to the most current address obtained. The Administrator has no obligation to
27 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
28 returned by the USPS a second time.

8.4.4 The deadlines for Class Members’ written objections, Challenges to Work
Weeks and/or Pay Periods (disputes), and Requests for Exclusion will be extended an additional
14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose

1 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
2 with the re-mailed Notice Packet.

3 8.4.5 If the Administrator, Defendants or Class Counsel is contacted by or
4 otherwise discovers any persons who believe they should have been included in the Class Data
5 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
6 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
7 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
8 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
9 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
of Class Notice, or the deadline dates in the Class Notice, which ever are later.

10 8.5 Requests for Exclusion (Opt-Outs).

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

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

26 8.5.3 Every Class Member who does not submit a timely and valid Request for
27 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all

1 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
2 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
3 Participating Class Member actually receives the Class Notice or objects to the Settlement.

4 8.5.4 Every Class Member who submits a valid and timely Request for
5 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
6 or have the right to object to the class action components of the Settlement. Aggrieved Employees
are eligible for an Individual PAGA Payment.

7 8.6 Challenges to Calculation of Work Weeks. Each Class Member shall have 60
8 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
9 Members whose Notice Packet is re-mailed) to challenge the number of Work Weeks and PAGA
10 Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a
11 dispute. A Class Work Weeks/PAGA Pay Periods Dispute form, attached as Exhibit C, may be
12 used for this purpose but is not required. The Class Member may challenge the allocation by
13 communicating with the Administrator via fax, email or mail. The Administrator must encourage
14 the challenging Class Member to submit supporting documentation. In the absence of any
15 contrary documentation, the Administrator is entitled to presume that the Work Weeks contained
16 in the Class Notice are correct so long as they are consistent with the Class Data. The
17 Administrator's determination of each Class Member's allocation of Work Weeks and/or Pay
18 Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator
shall promptly provide copies of all challenges to calculation of Work Weeks and/or Pay Periods
to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

19 8.7 Objections to Settlement.

20 8.7.1 Only Participating Class Members may object to the class action
21 components of the Settlement and/or this Agreement, including contesting the fairness of the
22 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
Litigation Expenses Payment and/or Class Representative Service Payment.

23 8.7.2 Participating Class Members may send written objections to the
24 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
25 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
26 Hearing. A Participating Class Member who elects to send a written objection to the
27 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice

1 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An
2 The Objection form attached as Exhibit D may be used for this purpose but is not required.

3 8.7.3 Non-Participating Class Members have no right to object to any of the class
4 action components of the Settlement.

5 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
6 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

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

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

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

8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the

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

4 8.8.5 Administrator's Declaration. Not later than 14 days before the date by
5 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
6 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
7 for filing in Court attesting to its due diligence and compliance with all of its obligations under
8 this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets
9 returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the
10 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
11 number of written objections and attach the Exclusion List. The Administrator will supplement
12 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
13 for filing the Administrator's declaration(s) in Court.

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

22 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on their records,
23 Defendants estimate that, as of the date of this Settlement Agreement, there are 55 Class Members
24 and 1,272 total Work Weeks during the Class period. If the number of Work Weeks and/or Class
25 Members as of the date the Court approves the settlement exceeds the referenced 1,272 Work
26 Weeks and/or 55 Class Members by more than 10.00%, the Gross Settlement Amount, including
27 the Class Counsel Fees Payment, the Class Representative Service Payment, and the LWDA
28 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.

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

10 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
11 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
12 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
13 subd. (l), a Proposed Final Approval Order, and a proposed Judgment (collectively "Motion for
14 Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel three (3)
15 court days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will
16 expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
17 disagreements concerning the Motion for Final Approval.

18 11.1 Response to Objections. Each Party retains the right to respond to any objection
19 raised by a Participating Class Member, including the right to file responsive documents in Court
20 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
21 by the Court.

22 11.2 Duty to Cooperate. If the Court denies the motion for final approval or conditions
23 Final Approval on any material change to the Settlement (including, but not limited to, the scope
24 of release to be granted by Class Members), the Parties will expeditiously work together in good
25 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
26 Approval as long as the proposed revisions do not increase the Gross Settlement Amount. The
27 Court's decision to award less than the amounts requested for the Class Representative Service
28 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or
Administrator Expenses Payment shall not constitute a material modification to the Agreement
within the meaning of this paragraph.

1 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
2 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
3 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
4 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

5 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
6 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
7 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
8 respective counsel, and all Participating Class Members who did not object to the Settlement as
9 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
10 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
11 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
12 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
13 Parties' obligations to perform under this Agreement will be suspended until such time as the
14 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
15 the amount of the Net Settlement Amount.

16 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
17 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
18 material modification of this Agreement (including, but not limited to, the scope of release to be
19 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
20 expeditiously work together in good faith to address the appellate court's concerns and to obtain
21 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
22 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
23 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
24 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
25 as long as the Gross Settlement Amount remains unchanged.

26
27
28 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
amended judgment.

1 **13. ADDITIONAL PROVISIONS.**

2 13.1 No Admission of Liability, Class Certification or Representative Manageability
3 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
4 claims. Nothing in this Agreement is intended or should be construed as an admission by
5 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
6 have any liability for any claims asserted; nor should it be intended or construed as an admission
7 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
8 certification and representative treatment is for purposes of this Settlement only. If, for any reason
9 the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendants
10 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
11 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
12 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
13 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).

14 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
15 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval
16 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
17 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
18 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
19 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
20 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
21 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
22 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
government agency.

23 Each Party agrees to immediately notify each other Party of any judicial or agency order,
24 inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense
25 Counsel separately agree not to, directly or indirectly, initiate any conversation or other
26 communication, before the filing of the Motion for Preliminary Approval, with any third party
27 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
"the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's

1 communications with Class Members in accordance with Class Counsel's ethical obligations
2 owed to Class Members.

3 13.3 No Solicitation. The Parties separately agree that they and their respective
4 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
5 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
6 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
obligations owed to Class Members.

7 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
8 Agreement together with its attached exhibits shall constitute the entire agreement between the
9 Parties relating to the Settlement, superseding any and all oral representations, warranties,
covenants, or inducements made to or by any Party.

10 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
11 and represent that they are authorized by Plaintiff and Defendants, respectively, to take all
12 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
13 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
14 terms of this Agreement including any amendments to this Agreement.

15 13.6 Cooperation. The Parties and their counsel will cooperate with each other and
16 use their best efforts, in good faith, to implement the Settlement by, among other things,
17 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
18 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
19 the form or content of any document necessary to implement the Settlement, or on any
20 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.

21 13.7 No Prior Assignments. The Parties separately represent and warrant that they
22 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
23 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
action, or right released and discharged by the Party in this Settlement.

24 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense
25 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
26 Settlement be relied upon as such within the meaning of United States Treasury Department
27 Circular 230 (31 CFR Part 10, as amended) or otherwise.

1 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
2 amended, modified, changed, or waived only by an express written instrument signed by all
3 Parties or their representatives, and approved by the Court.

4 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
5 inure to the benefit of, the successors of each of the Parties.

6 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
7 be governed by and interpreted according to the internal laws of the state of California, without
8 regard to conflict of law principles.

9 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
10 preparation of this Agreement. This Agreement will not be construed against any Party on the
11 basis that the Party was the drafter or participated in the drafting.

12 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
13 entered during Action and in this Agreement relating to the confidentiality of information shall
14 survive the execution of this Agreement.

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

25 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
26 is inserted for convenience of reference only and does not constitute a part of this Agreement.

27 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
28 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
weekend or federal legal holiday, such date or deadline shall be on the first business day
thereafter.

 13.17 Notice. All notices, demands or other communications between the Parties in

1 connection with this Agreement will be in writing and deemed to have been duly given as of the
2 third business day after mailing by United States mail, or the day sent by email or messenger,
3 addressed as follows:

4 To Plaintiff:
5 David Glenn Spivak, Esq.
6 The Spivak Law Firm
7 8605 Santa Monica Bl
8 PMB 42554
9 West Hollywood, CA 90069
10 david@spivaklaw.com

11 To Defendant:
12 Garo Khajadourian, Esq.
13 Law Offices of Briggs & Alexander
14 4300 Campus Drive, Suite 210
15 Newport Beach, CA 92660
16 garo@briggsalexander.com

17 13.18 Execution in Counterparts. This Agreement may be executed in one or more
18 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
19 Agreement shall be accepted as an original. All executed counterparts and each of them will be
20 deemed to be one and the same instrument if counsel for the Parties will exchange between
21 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
22 the existence and contents of this Agreement.

23 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
24 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
25 agree, pursuant to CCP section 583.330, to extend the date to bring a case to trial under CCP
26 section 583.310 for the entire period of this settlement process.

27 Dated: 04 / 03 / 2026, 2026

28 By: 
ARLENE APODACA

Dated: _____, 2026

By: _____
RAFI BARTANIYAN

1 connection with this Agreement will be in writing and deemed to have been duly given as of the
2 third business day after mailing by United States mail, or the day sent by email or messenger,
3 addressed as follows:

4 To Plaintiff:
5 David Glenn Spivak, Esq.
6 The Spivak Law Firm
7 8605 Santa Monica Bl
8 PMB 42554
9 West Hollywood, CA 90069
10 david@spivaklaw.com

11 To Defendant:
12 Garo Khajadourian, Esq.
13 Law Offices of Briggs & Alexander
14 4300 Campus Drive, Suite 210
15 Newport Beach, CA 92660
16 garo@briggsalexander.com

17 13.18 Execution in Counterparts. This Agreement may be executed in one or more
18 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
19 Agreement shall be accepted as an original. All executed counterparts and each of them will be
20 deemed to be one and the same instrument if counsel for the Parties will exchange between
21 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
22 the existence and contents of this Agreement.

23 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
24 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
25 agree, pursuant to CCP section 583.330, to extend the date to bring a case to trial under CCP
26 section 583.310 for the entire period of this settlement process.

27 Dated: _____, 2026

28 By: _____
ARLENE APODACA

Dated: 4/16, 2026

By: _____
RAFI BARTANIYAN

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Dated: 4/16, 2026

By: 
THOMAS VARTANIAN

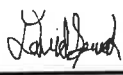
Dated: 4/16, 2026

By: 
RAFI BARTANYAN for
R AND T OIL INCORPORATED

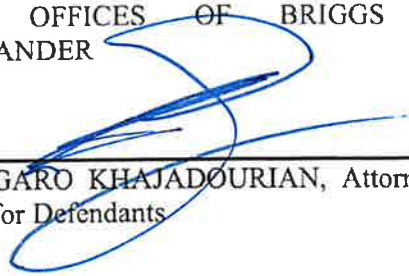
Dated: 4/16, 2026

By: 
THOMAS VARTANIAN for
R AND T OIL INCORPORATED

Dated: 04 / 02 / 2026, 2026

THE SPIVAK LAW FIRM
By: 
DAVID GLENN SPIVAK, Attorneys
for Plaintiff

Dated: 4/6, 2026

LAW OFFICES OF BRIGGS &
ALEXANDER
By: 
GARO KHAJADOURIAN, Attorneys
for Defendants

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EXHIBIT A

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

(case name: *Arlene Apodaca v. R And T Oil Incorporated* and number CVRI2402196)

***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 R And T Oil Incorporated, Rafi Bartaniyan, and Thomas Vartanian (“Defendants” is used herein as a placeholder) for alleged violations of California’s labor laws. The Action was filed by Defendants’ former employee Arlene Apodaca (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of 55 hourly employees that Defendants employed in California during the relevant Class Period of April 19, 2020 to _____ <<the date of preliminary approval of this Settlement>> (referred to as “Class Members”); and (2) civil penalties under the California Private Attorney General Act (“PAGA”) for hourly employees who worked for Defendants in California during the PAGA Period of April 19, 2023 to _____ <<the date of preliminary approval of this Settlement>> (referred to as “Aggrieved Employees”).

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

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

1 Pay Periods during either period, you can submit a challenge by the deadline date. See Section 4
2 of this Notice.

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

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

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	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 Request for Exclusion form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an

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

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employees of Defendants. The Action accuses Defendants of violating California labor laws by failing to pay wages for all hours worked, failing to provide meal periods, failing to authorize and permit rest periods, failing to indemnify for business expenses, failing to issue proper wage statements, failing to timely pay wages, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the

1 PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by
2 attorney in the Action: David Glenn Spivak of The Spivak Law Firm (“Class Counsel”).

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

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

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

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

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

22 A. Gross Settlement Amount. Defendants Will Pay \$200,000.00 as the Gross
23 Settlement Amount (“Gross Settlement”). Defendants have agreed to deposit the Gross
24 Settlement into an account controlled by the Administrator of the Settlement. The Administrator
25 will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments,
26 Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the
27 Administrator’s expenses, and penalties to be paid to the California Labor and Workforce
28 Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will
fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become
final. The Judgment will be final on the date the Court enters Judgment, or a later date if
Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

1. Attorney Fees and Costs. Up to \$66,666.66 (33 and 1/3%) of the Gross
Settlement to Class Counsel for attorneys’ fees and up to \$20,000.00 for their litigation expenses.
These amounts are subject to Court’s final approval. To date, Class Counsel have worked and

1 incurred expenses on the Action without payment.

2 2. Class Representative Service Payment. Up to \$10,000.00 as a Class
3 Representative Service Payment for filing the Action, working with Class Counsel and
4 representing the Class. This amount is subject to Court's final approval A Class Representative
5 Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual
6 Class Payments and any Individual PAGA Payments.

7 3. Administration Expenses. Up to \$6,000.00 to the Administrator for
8 services administering the Settlement.

9 4. PAGA Penalties. Up to \$5,000.00 for PAGA Penalties, allocated 75% to
10 the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees
11 based on their PAGA Period Pay Periods. The Administrator will report the Individual PAGA
12 Payments on IRS 1099 Forms.

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

15 Based on their records, Defendants estimated that, as of the date of the Settlement, (1)
16 there are 55 Class Members and 1,272 Total Work Weeks during the Class period. If the number
17 of Work Weeks and/or Class Members as of the date the Court approves the settlement exceeds
18 the referenced 1,272 Work Weeks and/or 55 Class Members by more than 10.00%, the Gross
19 Settlement Amount, including the Class Counsel Fees Payment, the Class Representative Service
20 Payment, and the LWDA payment, will increase proportionally according to the number of
21 additional Work Weeks or Class Members, whichever results in a higher increase in the Gross
22 Settlement Amount.

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

27 D. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
28 the Court to approve an allocation of 20.00% of each Individual Class Payment to taxable wages
("Wage Portion") and 80.00% 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.

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

1 Payments received from the proposed Settlement. You should consult a tax advisor if you have
2 any questions about the tax consequences of the proposed Settlement.

3 E. Need to Promptly Cash Payment Checks. The front of every check issued for
4 Individual Class Payments and individual PAGA Payments will show the date when the check
5 expires (the void date). If you don't cash it by the void date, your check will be automatically
6 cancelled, and the monies will be redistributed to those who cashed their checks

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

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

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

27 H. Administrator. The Court has appointed a neutral company, Apex Class Action
28 Administration (the "Administrator") to send this Notice, calculate and make payments, and
process Class Members' Requests for Exclusion. The Administrator will also decide Class
Member Challenges over 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.

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

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

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

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

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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

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

C. Workweek/Pay Period Challenges. The number of Class Work Weeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until <<RESPONSE DEADLINE>> to challenge the number of Work Weeks and/or 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 Class Work Weeks/PAGA Pay Periods Dispute form for this purpose. Section 9 of this Notice has the Administrator's contact information.

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

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

5. HOW WILL I GET PAID?

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

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

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

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

Email, fax, or mail a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. You may use the enclosed Request for Exclusion form for this purpose. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Arlene Apodaca vs. R And T Oil Incorporated*, Case No. CVRI2402196, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. You should send your Request for Exclusion to the Administrator by email, fax, or send by regular U.S. mail. **The Administrator must be sent your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information. If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

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

1 Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's
2 website <<COURT WEBSITE>>.

3 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
4 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
5 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
6 Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the
7 Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you
8 object to, why you object, and any facts that support your objection. Make sure you identify the
9 Action, *Arlene Apodaca vs. R And T Oil Incorporated*, case no. CVRI2402196, and include your
10 name, current address, telephone number, and approximate dates of employment for Defendants
11 and sign the objection. Section 9 of this Notice has the Administrator's contact information. You
12 may use the enclosed Objection form for this purpose. You should send your objection to the
Administrator by email, fax, or send by regular U.S. mail.

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

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

14 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
15 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department Dept. 1 of the
16 Riverside Superior Court, located at Riverside Historic Courthouse, 4050 Main Street, Riverside,
17 CA 92501. At the Hearing, the judge will decide whether to grant Final Approval of the
18 Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and
19 the Administrator. The Court will invite comment from objectors, Class Counsel and Defense
20 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
21 or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>
22 (<https://www.<<CourtVirtualAppearanceLink>>>). Check the Court's website for the most current
information.

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

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

24 The Class Action and PAGA Settlement Agreement ("Agreement") sets forth everything
25 Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to
26 read the Agreement, the Judgment or any other Settlement documents is to go to the
27 Administrator's website at <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone
or send an email to Class Counsel or the Administrator using the contact information listed below,
or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>)

1 and entering the Case Number for the Action, Case No. CVRI2402196. You can also make an
2 appointment to personally review court documents in the Clerk's Office at the Riverside Historic
Courthouse by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

5 Class Counsel:

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

11 Administrator:

12 Name of Company: Apex Class Action Administration
13 Email Address: _____
14 Mailing Address: _____
Telephone: _____
Fax Number: _____

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

16 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
17 as long as you request a replacement before the void date on the face of the original check. If
18 your check is already void, you will have no way to recover the money.

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

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

1 *Apodaca v. R And T Oil Incorporated*
2 **Superior Court of the State of California, County of Riverside**
3 Case No. CVRI2402196

4 **REQUEST FOR EXCLUSION FORM**

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

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

11 *Apodaca v. R And T Oil Incorporated* Class Action Administrator
12 c/o ____
13 ____
14 ____

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

20 (Typed or Printed Name)

21 (Address)

22 (City, State, Zip Code)

23 (Telephone Number, Including Area Code)

24 (Identification Number)

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

27 Dated: ____.
28 (Signature)

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EXHIBIT C

1 **CLASS WORK WEEKS/PAGA PAY PERIODS DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of Riverside
4 *Arlene Apodaca v. R And T Oil Incorporated*, Case No. CVRI2402196

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

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

9 XX – XX -

10 The amount of your estimated Settlement Award is based upon the number of eligible Work
11 Weeks you worked between April 19, 2020 and <<the date the Court preliminarily approves this
12 class action settlement>> and eligible PAGA Pay Periods you worked between April 19, 2023
13 and <<the date the Court preliminarily approves this class action settlement>>. “Work Week”
14 means any week during which a Class Member worked for Defendants for at least one day, during
15 the Class Period. “PAGA Pay Period” means any Pay Period during which an Aggrieved
16 Employee worked for Defendants for at least one day during the PAGA Period. The number of
17 Work Weeks and PAGA Pay Periods applicable to your claim are set forth below.

18 **YOUR ELIGIBLE WORKWEEKS/ PAY PERIODS**

19 Defendants’ records indicate that you worked <<number of Workweeks>> Work Weeks between
20 April 19, 2020 and <<the date the Court preliminarily approves this class action settlement>>
21 and <<number of PAGA Pay Periods>> PAGA Pay Periods between April 19, 2023 through
22 <<the date the Court preliminarily approves this class action settlement.>>

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

24 Under the terms of the Class Action Settlement, you are entitled to receive an Individual Class
25 Payment in the approximate estimated amount of <<\$Class Settlement Share Amount>>, minus
26 all applicable payroll and tax deductions, after the Court approves the Settlement and it goes into
27 effect. This process may take six months or more. You will receive a Form W-2 reflecting the
28 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>>

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

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

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

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EXHIBIT D

1 **OBJECTION FORM**

2 ***Arlene Apodaca v. R And T Oil Incorporated***
3 **Superior Court of the State California, County of Riverside**
4 **Case No. CVRI2402196**

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 *Arlene Apodaca v. R And T Oil Incorporated* 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 _____, 2026

(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>>:

Arlene Apodaca v. R And T Oil Incorporated Administrator
[ADDRESS]

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EXHIBIT E

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

11 ARLENE APODACA, on behalf of herself and
12 all others similarly situated, and the general
13 public, and as an “Aggrieved Employee” on
14 behalf of other “Aggrieved Employees” and the
State of California under the Private Attorneys
General Act of 2004,

15 *Plaintiff,*

16 vs.

17 R AND T OIL INCORPORATED, a California
18 corporation; RAFI BARTANIYAN, an
19 individual; THOMAS VARTANIAN, an
20 individual; and DOES 1–50, inclusive,
Defendants.

Case No. CVRI2402196

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

Action filed: April 19, 2024
Dept: Dept. 1, The Honorable
Harold W. Hopp

21
22
23 The Motion of Plaintiff Arlene Apodaca (hereafter referred to as “Plaintiff”) for
24 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
25 the Honorable Harold W. Hopp presiding. The Court having considered the Motion, the Class
26 Action and PAGA Settlement Agreement and Class Notice (“Settlement Agreement”), and
27

1 supporting papers, HEREBY ORDERS THE FOLLOWING:

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

11 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
12 all persons employed by Defendants in California and classified as non-exempt, hourly employees
13 who worked for Defendants anytime during the Class Period. The “Class Period” shall mean the
14 period of time from April 19, 2020, through the date of preliminary approval of this settlement.
15

16 3. Based on its records, Defendants estimate that, as of the date of the Settlement
17 Agreement, there are 55 Class Members and 1,272 Total Work Weeks during the Class period. If
18 the Work Weeks and/or Class Members as of the date the Court approves the settlement exceeds
19 the referenced 1,272 Work Weeks and/or 55 Class Members by more than 10%, the Gross
20 Settlement Amount, including the Class Counsel Fees Payment, the Class Representative Service
21 Payment, and the LWDA payment, will increase proportionally according to the number of
22 additional Work Weeks or Class Members, whichever results in a higher increase in the Gross
23 Settlement Amount.
24

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

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

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

23 7. No later than three (3) business days after receipt of the Class Data, the
24 Administrator shall notify Class Counsel that the list has been received and state the number of
25 Class Members, Aggrieved Employees, Work Weeks, and PAGA Pay Periods in the Class Data.
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8. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet with Spanish translation, if applicable, substantially in the forms attached to this order as **Exhibits A, B, C, and D**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of 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.

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

10. Class Counsel's contact information is David Glenn Spivak, Esq., The Spivak Law Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel's contact information is Garo Khajadourian, Esq., Law Offices of Briggs & Alexander, 4300 Campus Drive, Suite 210, Newport Beach, CA 92660.

11. The deadlines for Class Members' written objections, Challenges to Work Weeks and/or Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is

1 re-mailed. The Administrator will inform the Class Member of the extended deadline with the
2 re-mailed Notice Packet.

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

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

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

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

12
13 16. Every Class Member who submits a valid and timely Request for Exclusion is a
14 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
15 right to object to the class action components of the Settlement. Plaintiff releasees all claims for
16 civil penalties that could have been sought by the Labor Commissioner for the violations
17 identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim for
18 wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
19 Participating Class Member.

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

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

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

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

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

22. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to this Order, the Request for Exclusion form in substantially the form attached as Exhibit B to this Order, the Class Work Weeks/ PAGA Pay Periods Dispute form in substantially the form attached as Exhibit C to this Order, and the Objection form in substantially the form attached as Exhibit D to this Order.

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

24. The Court approves, for settlement purposes only, Arlene Apodaca as the Class Representative.

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

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

27. The Court preliminarily approves the Administration Expenses Payment subject to final review by the Court.

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

29. A Final Approval Hearing shall be held on ____ at _____.m. in Department Dept. 1 of the Superior Court for the State of California, County of Riverside, located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, CA 92501 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Service Payment to the Class Representative. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before _____. Plaintiff's counsel must give notice to any objecting party of any continuance of the hearing of the motion for final approval.

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

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

IT IS SO ORDERED.

DATE _____

THE HONORABLE HAROLD W.

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**HOPP
SUPERIOR COURT JUDGE**

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EXHIBIT F

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

10 ARLENE APODACA, on behalf of herself and
11 all others similarly situated, and the general
12 public, and as an “Aggrieved Employee” on
13 behalf of other “Aggrieved Employees” and the
State of California under the Private Attorneys
General Act of 2004,

14 *Plaintiff,*

15 vs.

16 R AND T OIL INCORPORATED, a California
17 corporation; RAFI BARTANIYAN, an
18 individual; THOMAS VARTANIAN, an
19 individual; and DOES 1–50, inclusive,
Defendants.

Defendant(s).

Case No. CVRI2402196

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

Action filed: April 19, 2024
Dept: Dept. 1, The Honorable
Harold W. Hopp

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21 This matter came on for hearing on ____ at ____m. in Department Dept. 1 of the above-
22 captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant
23 to California Rules of Court, Rule 3.769, as set forth in the Class Action Settlement PAGA
24 Settlement Agreement and Class Notice (the “Settlement Agreement”) filed herewith which
25 provides for a Gross Settlement Amount (“GSA”) of up to \$200,000.00 in compromise of all
26 disputed claims on behalf of all persons employed by Defendants in California and classified as
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1 non-exempt, hourly employees who worked for Defendants anytime during the Class Period of
2 April 19, 2020 to _____ <<the date of preliminary approval of this settlement>>. All
3 capitalized terms used herein shall have the same meaning as defined in the Settlement
4 Agreement. The Settlement Agreement was filed with the Court on _____ and was attached to
5 _____ as Exhibit _____.

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

15
16 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
17 to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary
18 Approval of Class Action Settlement of _____, the Notice Packet was sent
19 to each Class Member by First Class U.S. mail. The Notice Packet informed Class Members of
20 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
21 right to request exclusion, their right to comment upon or object to the Settlement, and their right
22 to appear in person or by counsel at the final approval hearing and be heard regarding final
23 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
24

25
26 _____
27 ¹ A true and correct copy of the Court's order ruling on the Motion for Final Approval of Class
28 Action Settlement entered on _____ is attached hereto as **Exhibit A** and
incorporated by reference.

1 No member of the Settlement Class presented written objections to the proposed Settlement as
2 part of this notice process, stated an intention to appear, or actually appeared at the final approval
3 hearing.

4 2. For purposes of this Final Order and Judgment, the Class Members are all persons
5 employed by Defendants in California and classified as non-exempt, hourly employees who
6 worked for Defendants anytime during the Class Period of April 19, 2020 to _____ <<the date
7 of preliminary approval of this settlement>>. The Participating Class Members are all Class
8 Members who did not submit a valid and timely Request for Exclusion from the Settlement. The
9 Court finds ____ Class Member(s) - ____ - submitted a request for exclusion from the Settlement
10 as determined by the Administrator and therefore is/are not Participating Class Members.

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

16 4. **Release by Plaintiff.** Effective on the date when (1) Defendants fully fund the
17 entire Gross Settlement Amount and (2) provide written confirmation to Plaintiff's counsel that they
18 have paid the taxes owed on the Wage Portion of the Individual Class Payments to the appropriate
19 tax entities, Plaintiff and her respective former and present spouses, representatives, agents,
20 attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released
21 Parties from all claims, transactions, or occurrences that occurred during the Class Period,
22 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged,
23 based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or
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1 reasonably could have been, alleged based on facts contained in the Operative Complaint,
2 Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.3, below
3 ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this
4 Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits,
5 social security benefits, workers' compensation benefits that arose at any time, or based on
6 occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or
7 law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
8 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
9 notwithstanding such different or additional facts or Plaintiff's discovery of them. For purposes
10 of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and
11 benefits, if any, of section 1542 of the California Civil Code, which reads:

12
13 **A general release does not extend to claims that the creditor or releasing party**
14 **does not know or suspect to exist in his or her favor at the time of executing**
15 **the release, and that if known by him or her would have materially affected his**
16 **or her settlement with the debtor or Released Party.**

17 5. **Release by Participating Class Members.** All Participating Class Members, on
18 behalf of themselves and their respective former and present representatives, agents, attorneys,
19 heirs, administrators, successors, and assigns, release Released Parties from all claims stated in
20 the Operative Complaint and those based solely upon the facts alleged in the Operative
21 Complaint. Participating Class Members do not release any other claims, including claims for
22 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
23 unemployment insurance, disability, social security, workers' compensation, or claims based on
24 facts occurring outside the Class Period. This release will not take effect until Defendants have
25 (1) paid the Gross Settlement Amount in full per this Settlement Agreement and (2) have provided
26 written confirmation to Plaintiff's counsel that they have paid the taxes owed on the Wage Portion of
27

1 the Individual Class Payments to the appropriate tax entities.

2 6. **PAGA Release**. Effective on the date when (1) Defendants fully fund the entire
3 Gross Settlement Amount and (2) provide written confirmation to Plaintiff's counsel that they have
4 paid the taxes owed on the Wage Portion of the Individual Class Payments to the appropriate tax
5 entities, Plaintiff releases all claims for civil penalties that could have been sought by the
6 Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA;
7 Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such
8 Aggrieved Employee is a Participating Class Member.

9 4. The Court further finds and determines that the terms of the settlement are fair,
10 reasonable and adequate, that the settlement is ordered finally approved, and that all terms and
11 provisions of the settlement, including the release of claims contained therein, should be and
12 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
13 Agreement according to its terms. As of the Effective Date, and for the duration of the Settlement
14 Class Period, and after Defendants have fully funded the entire Gross Settlement Amount and
15 have provided written confirmation to Plaintiff's counsel that they have paid the taxes owed on the
16 Wage Portion of the Individual Class Payments to the appropriate tax entities, all Participating Class
17 Members are hereby deemed to have waived and released all Released Claims and are forever
18 barred and enjoined from prosecuting the Released Claims against the Released Parties as fully
19 set forth in the Settlement. Because no objections were received by the Parties or the Court
20 through the date of this Final Order and Judgment, the "Effective Date" means the day the Court
21 entered this Judgment.

22 5. The Court finds and determines that (a) the Settlement Shares to be paid to
23 Participating Class Members and (b) the LWDA payment as civil penalties under the California
24

1 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
2 2699 *et seq.*, as provided for by the Settlement Agreement are fair and reasonable. The Court
3 hereby grants final approval to, and orders the payment of, those amounts be made to the
4 Participating Class Members and to the California Labor & Workforce Development Agency
5 (“LWDA”), in accordance with the terms of the Settlement Agreement.
6

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

9 a. Class Counsel fees & costs of \$66,666.66 in attorneys’ fees and \$20,000.00
10 in litigation costs to Class Counsel;

11 b. \$10,000.00 as a Class Representative Service Payment award payable to
12 Plaintiff for her services as a Class Representative;

13 c. \$_____ as an Administration Expense Payment to Apex Class
14 Action Administration for its services as the Administrator; and
15

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

18 7. The settlement shall proceed as directed in the Settlement Agreement, and no
19 payments pursuant to the settlement shall be distributed until after the Effective Date. Without
20 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
21 of all matters relating to the interpretation, administration, implementation, effectuation and
22 enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of
23 Court 3.769(h).
24

25 8. Within 14 calendar days of the Effective Date, Defendants shall deposit the entire
26 settlement proceeds in an account designated by the Administrator: (i) the total amount of all
27
28

1 Individual Class Payments to Participating Class Members, (ii) the Court approved Class Counsel
2 Fees Payment and Class Counsel Litigation Expenses Payment, (iii) the Court-approved Class
3 Representative Service Payment, (iv) the Court-approved Administration Expenses Payment, (v)
4 the payment to the LWDA, and (vi) the total amount of all Individual PAGA Payments to
5 Aggrieved Employees.

6
7 9. Defendants' payment of such sums and the employer payroll taxes, which
8 Defendants shall pay directly to the appropriate taxing entities in addition to and separate from
9 the Gross Settlement Amount, shall be the sole financial obligation of Defendants under the
10 settlement, and shall be in full satisfaction of all claims released herein, including, without
11 limitation, all claims for wages, penalties, interest, attorneys' fees, costs and expenses.

12 10. Within 14 days after Defendants fund the Gross Settlement Amount, the
13 Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments,
14 the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees
15 Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service
16 Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
17 Expenses Payment and the Class Representative Service Payment shall not precede disbursement
18 of Individual Class Payments and individual PAGA Payments. Any envelope transmitting a
19 settlement distribution to a Class Member shall bear the notation, "YOUR CLASS ACTION
20 SETTLEMENT CHECK IS ENCLOSED." The Administrator shall mail a reminder postcard to
21 any Class Member whose settlement distribution check has not be negotiated within 60 days after
22 the date of mailing. If (i) any of the Class Members are current employees of the Defendants, (ii)
23 the distribution mailed to those employees is returned to the Administrator as being undeliverable,
24 and (iii) the Administrator is unable to locate a valid mailing address, the Administrator shall
25
26
27

1 arrange with the Defendants to have those distributions delivered to the employees at their place
2 of employment.

3 11. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
4 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
5 Share check. After the expiration of the 180-day period, on Defendants' behalf, the Administrator
6 shall redistribute any amounts from voided settlement checks and otherwise unclaimed, plus
7 interest at the legal rate of interest from the date of entry of the initial judgement to those Class
8 Members who have cashed their checks. For any redistributed checks that remain uncashed or
9 cancelled after the void date, the Administrator shall transmit the funds represented by such
10 checks to the California Controller's Unclaimed Property Fund in the name of the Class Member
11 thereby leaving no "unpaid residue."
12

13 12. The Parties shall file a final accounting report by _____. A non-appearance case
14 review re submission of a final report is scheduled for ____ at _____.m. in Department Dept. 1.
15

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

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

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

25 16. 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

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

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE _____

**THE HONORABLE HAROLD W.
HOPP
SUPERIOR COURT JUDGE**

EXHIBIT 2



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 19, 2024

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

Re: Arlene Apodaca / R And T Oil Incorporated

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Arlene Apodaca (hereafter “Apodaca” or “Complainant”) provides notice that Rafi Bartaniyan, Thomas Vartanian, R And T Oil Incorporated, a California corporation, and related entities (collectively “the R&T Oil Employers” or “the Employers”) violated her rights and those of all other individuals the R&T Oil Employers have employed or otherwise contracted with in California as non-exempt, hourly employees, including, but not limited to cashiers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1174, 1194, 1197, 1198, 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Apodaca hereby provides this notice to the Labor & Workforce Development Agency and the R&T Oil Employers and their agents and representatives.

At all relevant times, the R&T Oil Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Apodaca and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately October 14, 2023, the R&T Oil Employers began to employ Apodaca in Riverside, California in the position of hourly, non-exempt cashier. The R&T Oil Employers continuously employed her in that capacity until on or about December 10, 2023 when her employment ended.

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

The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The R&T Oil Employers only compensated Apodaca and Aggrieved Employees for their scheduled hours and failed to compensate them for all hours worked including the work. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to perform after their scheduled end time, including, but not limited to, closing duties, counting lottery tickets, and preparing and sending closing shift report to their managers. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to complete these tasks after the scheduled end time without compensation. As a result, the R&T Oil Employers also failed to compensate Apodaca 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 R&T Oil Employers also failed to compensate Apodaca 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.

At all relevant times, the R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The R&T Oil Employers scheduled Apodaca and the other Aggrieved Employees to work alone at their stores. The R&T Employers prohibited Apodaca and the Aggrieved Employees from leaving their work premises during meal and/or rest breaks, required them to monitor their cellphones and respond to their managers' communications and to attend to the customers at all times. The R&T Oil Employers also failed to pay premium

wages for days on which they failed to provide Apodaca and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the R&T Oil Employers failed to authorize and permit Apodaca and all of the other Aggrieved Employees to take any ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The R&T Oil Employers also failed to pay premium wages for days on which they failed to authorize and permit Apodaca and all of the other Aggrieved Employees to take rest breaks as required by law.

The R&T Oil Employers failed to provide paid sick leave to Apodaca and all of the other Aggrieved Employees.

At all relevant times, the R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to supply their personal mobile phones to perform their job duties including but not limited to, communicating with their managers and sending them closing shift reports and to update them and confirm their locations. However, the R&T Oil Employers did not provide these items and did not reimburse Apodaca and the other Aggrieved Employees for these items.

At all relevant times, the R&T Oil Employers failed to issue to Apodaca 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 R&T Oil Employers knowingly and intentionally failed to state on the wage statements they issued to Apodaca 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 doubletime wages earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages earned, the correct address of employer, all hours work at each rate of pay, sick pay hours, and related compensation.

The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave.

The R&T Oil Employers also failed to timely pay Apodaca and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Apodaca and the Aggrieved Employees also had to wait weeks to receive their payment for their training period.

The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with suitable seats. The R&T Oil Employers provided Apodaca and all of the other Aggrieved Employees seats that caused them unnecessary strain and discomfort.

The R&T Oil Employers failed to maintain accurate employee records of Apodaca and all of the other Aggrieved Employees.

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

- (a) The R&T Oil Employers failed to pay Apodaca and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The R&T Oil Employers failed to provide paid sick leave to Apodaca and all of the other Aggrieved Employees;
- (c) The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (d) The R&T Oil Employers failed to authorize and permit Apodaca and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (e) The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees at one hour's pay for each day in which the R&T Oil Employers failed to provide them with one or more meal periods as required by law;

- (f) The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees at one hour's pay for each day in which the R&T Oil Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (g) The R&T Oil Employers failed to indemnify Apodaca and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (h) The R&T Oil Employers knowingly and intentionally failed to issue to Apodaca and all of the other Aggrieved Employees accurate and complete wage statements;
- (i) The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave;
- (j) The R&T Oil Employers willfully failed to timely pay Apodaca and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the R&T Oil Employers and when their employment ended;
- (k) The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with suitable seats; and
- (l) The R&T Oil Employers failed to maintain accurate employment records pertaining to Apodaca and all of the other Aggrieved Employees.

Accordingly, Apodaca now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the R&T Oil Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment

operated for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant times during the applicable limitations period, the “Employers, Apodaca, and all of the Aggrieved Employees were covered by the Wage Order because the R&T Oil Employers operated, and Apodaca, and all of the Aggrieved Employees worked for, one or more gas stations and convenience stores. Accordingly, Apodaca and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than

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

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

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

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

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

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

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

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

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

Failure To Provide Sick Leave
(Labor Code §§ 233, 246, and 246.5)

Labor Code section 233 states,

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

Labor Code section 246(a)(1) states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Labor Code section 246.5 states,

- (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:
 - (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
 - ...
- (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with paid sick leave. Accordingly, Apodaca now seeks civil penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

1. For violations of Labor Code section 233, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 233 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 233 occurred (penalties set by Labor Code section 2699(f)(2));

2. For violations of Labor Code section 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 246.5, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246.5 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246.5 occurred (penalties set by Labor Code section 2699(f)(2)).

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

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

As discussed above, at all relevant times, the R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with all timely and duty-free, 30-minute meal periods, including, but not limited to, a second meal period when they worked more than 10 hours in a workday. Furthermore, the R&T Oil Employers failed to pay premium wages for days on which they failed to provide Apodaca and all of the other Aggrieved Employees with meal periods in accordance with California law. Accordingly, Apodaca now seeks civil penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

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

3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Section 2(G) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

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

As discussed above, at all relevant times, the R&T Oil Employers failed to authorize and permit Apodaca 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 R&T Oil Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the R&T Oil Employers failed to pay Apodaca and all of the other Aggrieved Employees premium wages on workdays the R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Apodaca now seeks civil penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

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

Additionally, the Wage Order states,

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

...

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

Wage Order, §§ 9(A) and (B).

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

As described above, the R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to supply personal mobile phones to perform their job duties. However, the R&T Oil Employers did not provide these items and did not reimburse Apodaca and the other Aggrieved Employees for these items. Accordingly, Apodaca seeks civil

penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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 R&T Oil 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 R&T Oil Employers failed to state in the wage statements they issued to Apodaca 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 without compensation (as described above). The R&T Oil Employers knowingly and intentionally failed to state on the wage statements they issued to Apodaca 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 doubletime wages earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages earned, the correct address of employer, all hours work at each rate of pay, and related compensation. Accordingly, Apodaca seeks civil penalties for the Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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Failure To Provide Notice of Available Sick Leave
(Labor Code § 246)

Labor Code § 246 states,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Apodaca seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

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 R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, training pay, and related compensation, at the intervals stated above.

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

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 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 R&T Oil Employers failed to pay Apodaca 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 Apodaca, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. Additionally, the R&T Oil Employers failed to issue to Apodaca and all of the other Aggrieved Employees whose employment ended their final paychecks until several days after the

termination or resignation. By failing to pay Apodaca and all of the other Aggrieved Employees as set forth above at the end of employment, the R&T Oil Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Apodaca seeks civil penalties from the R&T Oil 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 Provide Suitable Seats
(Lab. Code § 1198)

Section 14 of the Wage Order states as follows:

Seats.

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

The nature of the work the R&T Oil Employers expected Apodaca and all of the other Aggrieved Employees to perform reasonably permits the use of seats. However, the R&T Oil Employers, in violation of the Wage Order and Labor Code § 1198, did not provide Apodaca and all of the other Aggrieved Employees with suitable seats.

Pursuant to Labor Code Sections 2699(a) and (f), Apodaca, on behalf of herself and all of the other Aggrieved Employees, seeks \$100.00 for each employee per pay period for each initial violation of § 1198 and \$200.00 for each employee per pay period for each subsequent violation of § 1198 (penalty amounts established by Labor Code Section 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 R&T Oil Employers failed to compensate Apodaca 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 doubletime wages earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages earned, address of employer, all hours work at each rate of pay, and related compensation. As a result, the R&T Oil Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Apodaca and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Apodaca seeks civil penalties on behalf of herself 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)).

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

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be

violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Apodaca and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the R&T Oil Employers and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Aggrieved Employees, Apodaca seeks the same civil penalties against Rafi Bartaniyan and Thomas Vartanian on the same grounds for which she seeks civil penalties against the R&T Oil Employers.

Conclusion

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

Sincerely,



David Glenn Spivak Esq.

david@spivaklaw.com

cc: Arlene Apodaca

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LWDA / The R&T Oil Employers

Re: Arlene Apodaca

4/19/2024

Page 25 of 25

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EXHIBIT 3

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7
8 Attorneys for Plaintiff(s),
9 ARLENE APODACA, and all others similarly situated

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

13 ARLENE APODACA, on behalf of herself and
14 all others similarly situated, and the general
public,

15 *Plaintiff(s),*

16 vs.

17
18 R AND T OIL INCORPORATED, a California
corporation; RAFI BARTANIYAN, an
19 individual; THOMAS VARTANIAN, an
individual; and DOES 1–50, inclusive,

20 *Defendant(s).*

Case No. **CVRI 2402196**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.)

JURY TRIAL DEMANDED



21
22
23 **SPIVAK LAW**
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27
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Los Angeles, CA 90067

1 Plaintiff, Arlene Apodaca (hereafter “Plaintiff” or “Apodaca”), on behalf of herself and
2 all others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants R And T Oil Incorporated, a
7 California corporation, Rafi Bartaniyan, Thomas Vartanian, and Does 1 through 50, inclusive
8 (collectively “Defendants”).

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

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

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

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

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

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

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

20 (H) Issue statements of sick leave available;

21 (I) Timely pay wages during and 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 Arlene Apodaca is a resident of California.

26 4. Defendant R And T Oil Incorporated is a corporation organized and existing under
27 the laws of California and also a citizen of California based on Plaintiff’s information and belief.

28 5. Defendant Rafi Bartaniyan is an individual and a citizen of California based on



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1 Plaintiff's information and belief.

2 6. Defendant Thomas Vartanian is an individual and a citizen of California based on
3 Plaintiff's information and belief.

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

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

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

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

24 **III. CLASS ALLEGATIONS**

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



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1 a class action.

2 12. **Class Definition:** The Class is defined as follows: All persons Defendants
3 employed or otherwise contracted with in California as non-exempt, hourly employees, including,
4 but not limited to cashiers, individuals performing work comparable to the aforementioned,
5 compensated comparably to the aforementioned, and individuals in similar positions, at any time
6 during the period beginning four years prior to the filing of this action and ending on the date that
7 final judgment is entered in this action (“Class” or “Class Members”).

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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1 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

2 **IV. STATEMENT OF FACTS**

3 20. The Wage Order applies to “all persons employed in the mercantile industry
4 whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage
5 Order defines “Mercantile Industry” to mean “any industry, business, or establishment operated
6 for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or
7 retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant
8 times during the applicable limitations period, Defendants, Plaintiff, and all of the Class Members
9 were covered by the Wage Order because Defendants operated, and Plaintiff, and all of the Class
10 Members worked for, one or more gas stations and convenience stores. Accordingly, Plaintiff and
11 all of the other Class Members are entitled to the protections the Wage Order provides.

12 21. On approximately October 14, 2023, Defendants began to employ Plaintiff in
13 Riverside, California in the position of hourly, non-exempt cashier. Defendants continuously
14 employed her in that capacity until on or about December 10, 2023 when her employment ended.

15 22. At all relevant times, the Defendants issued wages to Plaintiff and all of the other
16 Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant
17 times, the Defendants classified Plaintiff and all of the other Class Members as non-exempt
18 employees entitled to the protections of the Labor Code and the Wage Order.

19 23. At all relevant times, the Defendants failed to compensate Apodaca and all of the
20 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
21 Defendants only compensated Plaintiff and Class Members for their scheduled hours and failed
22 to compensate them for all hours worked including the work Defendants required Plaintiff and all
23 of the other Class Members to perform after their scheduled end time, including, but not limited
24 to, closing duties, counting lottery tickets, and preparing and sending closing shift report to their
25 managers. Defendants required Plaintiff and all of the other Class Members to complete these
26 tasks after the scheduled end time without compensation. As a result, Defendants also failed to
27 compensate Plaintiff and all of the other Class Members at the correct rates of pay for all hours
28 worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of



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1 the workweek. Defendants also failed to compensate Plaintiff and all of the other Class Members
2 at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the
3 seventh day of the workweek.

4 24. At all relevant times, Defendants failed to provide Plaintiff and all of the other
5 Class Members with all timely 30-minute, off-duty meal periods. Defendants scheduled Plaintiff
6 and the other Class Members to work alone at their stores. Defendants prohibited Plaintiff and
7 the Class Members from leaving their work premises during meal and/or rest breaks, required
8 them to monitor their cellphones and respond to their managers' communications and to attend to
9 the customers at all times. Defendants also failed to pay premium wages for days on which they
10 failed to provide Plaintiff and all of the other Class Members with meal periods as required by
11 law.

12 25. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
13 the other Class Members to take any ten-minute, off-duty, paid rest breaks every four hours
14 worked or major portion thereof. Defendants also failed to pay premium wages for days on which
15 they failed to authorize and permit Plaintiff and all of the other Class Members to take rest breaks
16 as required by law.

17 26. At all relevant times, Defendants failed to provide paid sick leave to Plaintiff and
18 all of the other Class Members.

19 27. At all relevant times, Defendants required Plaintiff and all of the other Class
20 Members to incur certain business expenses in the course of performing their duties. Defendants
21 required Plaintiff and all of the other Class Members to supply their personal mobile phones to
22 perform their job duties including but not limited to, communicating with their managers and
23 sending them closing shift reports and to update them and confirm their locations. However,
24 Defendants did not provide these items and did not reimburse Plaintiff and the other Class
25 Members for these items.

26 28. At all relevant times, Defendants failed to issue to Plaintiff and all of the other
27 Class Members complete and accurate wage statements that state all hours worked at the correct
28 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the



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1 wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
2 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
3 earned, all overtime wages earned, all meal period premium wages earned, all doubletime wages
4 earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages
5 earned, the correct address of employer, all hours work at each rate of pay, sick pay hours, and
6 related information.

7 29. At all relevant times, the Defendants failed to provide Plaintiff and all of the other
8 Class Members with statements of sick leave available, or paid time off in lieu of sick leave.

9 30. At all relevant times, Defendants also failed to timely pay Plaintiff and all of the
10 other Class Members all earned wages as described above during and at the conclusion of
11 employment. Plaintiff and the Class Members also had to wait weeks to receive their payment for
12 their training period.

13 31. Defendants failed to provide Plaintiff and all of the other Class Members with
14 suitable seats. Defendants provided Plaintiff and all of the other Class Members seats that caused
15 them unnecessary strain and discomfort.

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

18 33. 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 overtime, and doubletime wages for all hours worked at the correct rates of pay;
- 28 F. Not indemnified for all necessary business expenditures incurred during



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1 the discharge of their duties;

2 G. Not provided with accurate and complete wage statements; and

3 H. Not timely paid all earned and unpaid wages at the time their employment
4 ended.

5 **FIRST CAUSE OF ACTION**

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

8 **Lab. Code §§ 510, 1194, 1197, and 1198**

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

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

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

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

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

18 37. Section 3 of the Wage Order states:

19
20 The following overtime provisions are applicable to employees 18 years of age or
21 over and to employees 16 or 17 years of age who are not required by law to attend
22 school and are not otherwise prohibited by law from engaging in the subject work.
23 Such employees shall not be employed more than eight (8) hours in any workday
24 or more than 40 in a workweek unless the employee receives one and one half
25 (1½) times such employee’s regular rate of pay for all hours worked over 40 hours
26 in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment
27 beyond eight (8) hours in any workday or more than six (6) days in any workweek
28 is permissible provided the employee is compensated for such overtime at not less



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than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

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

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

39. Labor Code section 510 states:

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



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1 than one rate of overtime compensation in order to calculate the amount to be paid
2 to an employee for any hour of overtime work.

3
4 40. Labor Code section 1194 invalidates any agreement between an employer and an
5 employee to work for less than the minimum wage required under the applicable Wage Order.

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

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

11 43. In conjunction, these provisions of the Labor Code require employers to pay non-
12 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
13 worked, including unrecorded hours when the employer knew or reasonably should have known
14 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
15 Cal.4th 575, 585.)

16 44. As discussed above, at all relevant times during the applicable limitations period,
17 Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including,
18 but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular,
19 overtime and doubletime hours, respectively, that they worked at the correct rates of pay.

20 45. 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 compensate Plaintiff and the other Class Members for all hours worked at the correct
23 rates of pay as required by California law.

24 46. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class
25 Members, seek to recover unpaid wages, liquidated damages in amounts equal to the amounts of
26 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
27 subject to proof.

28 47. Additionally, with respect to this cause of action, on behalf of herself and the class,



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1 Plaintiff prays for an award of reasonable costs and attorneys' fees, including interest thereon, as
2 permitted by law, all in amounts subject to proof.

3 **B. FAILURE TO PROVIDE SICK LEAVE**

4 48. Labor Code section 233 states

5
6 Any employer who provides sick leave for employees shall permit an
7 employee to use in any calendar year the employee's accrued and available
8 sick leave entitlement, in an amount not less than the sick leave that would
9 be accrued during six months at the employee's then current rate of
10 entitlement, for the reasons specified in subdivision (a) of Section 246.5.

11
12 49. Labor Code section 246(a)(1) states

13
14 An employee who, on or after July 1, 2015, works in California for the
15 same employer for 30 or more days within a year from the commencement
16 of employment is entitled to paid sick days as specified in this section.

17
18 50. Labor Code section 246.5 states

19
20 (a) Upon the oral or written request of an employee, an employer shall
21 provide paid sick days for the following purposes:

22
23 (1) Diagnosis, care, or treatment of an existing health
24 condition of, or preventive care for, an employee or an
25 employee's family member.

26 ...

27
28 (c) (1) An employer shall not deny an employee the right to use accrued



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1 sick days ...

2
3 51. The Defendants failed to provide Plaintiff and all of the other Class Members with
4 paid sick leave.

5 52. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
7 failure to pay Plaintiff and the other Class Members sick leave as required by California law.

8 **C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
9 **LABOR CODE**

10 53. In relevant part, Labor Code section 558.1 states:

11
12 (a) Any employer or other person acting on behalf of an employer,
13 who violates, or causes to be violated, any provision regulating
14 minimum wages or hours and days of work in any order of the
15 Industrial Welfare Commission, or violates, or causes to be
16 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
17 held liable as the employer for such violation.

18
19 (b) For purposes of this section, the term "other person acting on
20 behalf of an employer" is limited to a natural person who is an
21 owner, director, officer, or managing agent of the employer, and
22 the term "managing agent" has the same meaning as in subdivision
23 (b) of Section 3294 of the Civil Code.

24
25 At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all
26 of the other Class Members, and/or "owner," "managing agent," and/or "officer" of the
27 Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian
28 directly or indirectly, or through an agent or other person, employed and exercised control over



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1 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
2 the Labor Code and the Wage Order described above. On behalf of herself and all of the other
3 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
4 liquidated damages, attorneys' fees, costs, and related relief against Rafi Bartaniyan and Thomas
5 Vartanian that is the same as the award against the other Defendants on the same grounds for
6 which Plaintiff seeks against the other Defendants.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **Lab. Code §§ 226.7 and 512**

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

11 54. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

15 56. In relevant part, California Labor Code § 1198 states:

16
17 The maximum hours of work and the standard conditions of labor fixed by the
18 commission shall be the maximum hours of work and the standard conditions of
19 labor for employees. The employment of any employee for longer hours than those
20 fixed by the order or under conditions of labor prohibited by the order is unlawful.

21
22 57. In relevant part, In relevant part, California Labor Code § 512 states:

23
24 An employer shall not employ an employee for a work period of
25 more than five hours per day without providing the employee with
26 a meal period of not less than 30 minutes, except that if the total
27 work period per day of the employee is no more than six hours, the
28 meal period may be waived by mutual consent of both the



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1 employer and employee.

2
3 An employer shall not employ an employee for a work period of
4 more than 10 hours per day without providing the employee with
5 a second meal period of not less than 30 minutes, except that if the
6 total hours worked is no more than 12 hours, the second meal
7 period may be waived by mutual consent of the employer and the
8 employee only if the first meal period was not waived.

9
10 58. In relevant part, Section 11 of the Wage Order states:

11
12 Meal Periods:

13
14 (A) No employer shall employ any person for a work period of more
15 than five (5) hours without a meal period of not less than 30
16 minutes, except that when a work period of not more than six (6)
17 hours will complete the day's work the meal period may be waived
18 by mutual consent of the employer and the employee.

19
20 (B) An employer may not employ an employee for a work period of
21 more than ten (10) hours per day without providing the employee
22 with a second meal period of not less than 30 minutes, except that
23 if the total hours worked is no more than 12 hours, the second meal
24 period may be waived by mutual consent of the employer and the
25 employee only if the first meal period was not waived.

26
27 (C) Unless the employee is relieved of all duty during a 30 minute meal
28 period, the meal period shall be considered an "on duty" meal



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1 period and counted as time worked. An “on duty” meal period shall
2 be permitted only when the nature of the work prevents an
3 employee from being relieved of all duty and when by written
4 agreement between the parties an on-the-job paid meal period is
5 agreed to. The written agreement shall state that the employee
6 may, in writing, revoke the agreement at any time.
7

8 (D) If an employer fails to provide an employee a meal period in
9 accordance with the applicable provisions of this Order, the
10 employer shall pay the employee one (1) hour of pay at the
11 employee’s regular rate of compensation for each workday that the
12 meal period is not provided.
13

14 (E) In all places of employment where employees are required to eat
15 on the premises, a suitable place for that purpose shall be
16 designated.
17

18 59. In relevant part, California Labor Code § 226.7 states:
19

20 (b) An employer shall not require an employee to work during
21 a meal or rest period mandated pursuant to an applicable
22 statute, or applicable regulation, standard, or order of the
23 Industrial Welfare Commission, the Occupational Safety
24 and Health Standards Board, or the Division of
25 Occupational Safety and Health.
26

27 (c) If an employer fails to provide an employee a meal period
28 or rest period in accordance with a state law, including, but



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1 not limited to, an applicable statute or applicable
2 regulation, standard, or order of the Industrial Welfare
3 Commission, the Occupational Safety and Health
4 Standards Board, or the Division of Occupational Safety
5 and Health, the employer shall pay the employee one
6 additional hour of pay at the employee's regular rate of
7 compensation for each work day that the meal or rest
8 period is not provided.
9

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

14 61. Defendants intentionally failed to provide Plaintiff and the Class Members with
15 all required 30-minute duty free meal periods in accordance with the Wage Order.

16 62. As discussed above, at all relevant times, Defendants failed to provide Plaintiff
17 and the Class Members with all timely, duty-free meal periods. Furthermore, Defendants failed
18 to pay premium wages for days on which they failed to provide Plaintiff and the other Class
19 Members with timely meal periods.

20 63. Plaintiff is informed and believes and thereon alleges that, at all relevant times
21 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
22 which resulted in Defendants not providing the and the Class Members with all off-duty meal
23 periods required by California law.

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

27 65. By reason of the above, Plaintiff and the Class Members are entitled to premium
28 wages for workdays in which one or more meal periods were not provided to them pursuant to



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California Labor Code § 226.7.

**A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE
LABOR CODE**

66. In relevant part, Labor Code section 558.1 states:

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

(d) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the other Defendants.



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1 **THIRD CAUSE OF ACTION**

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

3 **Lab. Code §§ 226.7 and 1198**

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

5 67. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

9 69. In relevant part, California Labor Code § 1198 states:

10
11 The maximum hours of work and the standard conditions of labor
12 fixed by the commission shall be the maximum hours of work and
13 the standard conditions of labor for employees. The employment
14 of any employee for longer hours than those fixed by the order or
15 under conditions of labor prohibited by the order is unlawful.

16
17 70. In relevant part, Section 12 of the Wage Order states:

18
19 Rest Periods:

20
21 (A) Every employer shall authorize and permit all employees to take
22 rest periods, which insofar as practicable shall be in the middle of
23 each work period. The authorized rest period time shall be based
24 on the total hours worked daily at the rate of ten (10) minutes net
25 rest time per four (4) hours or major fraction thereof. However, a
26 rest period need not be authorized for employees whose total daily
27 work time is less than three and one-half (3 ½) hours. Authorized
28 rest period time shall be counted as hours worked for which there



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1 shall be no deduction from wages.

- 2
- 3 (B) If an employer fails to provide an employee a rest period in
- 4 accordance with the applicable provisions of this order, the
- 5 employer shall pay the employee one (1) hour of pay at the
- 6 employee's regular rate of compensation for each workday
- 7 that the rest period is not provided.
- 8

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

10

- 11 (b) An employer shall not require an employee to work during
- 12 a meal or rest period mandated pursuant to an applicable
- 13 statute, or applicable regulation, standard, or order of the
- 14 Industrial Welfare Commission, the Occupational Safety
- 15 and Health Standards Board, or the Division of
- 16 Occupational Safety and Health.
- 17

- 18 (c) If an employer fails to provide an employee a meal period
- 19 or rest period in accordance with a state law, including, but
- 20 not limited to, an applicable statute or applicable
- 21 regulation, standard, or order of the Industrial Welfare
- 22 Commission, the Occupational Safety and Health
- 23 Standards Board, or the Division of Occupational Safety
- 24 and Health, the employer shall pay the employee one
- 25 additional hour of pay at the employee's regular rate of
- 26 compensation for each work day that the meal or rest
- 27 period is not provided.
- 28



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

4 73. As discussed above, Defendants intentionally failed to authorize and permit
5 Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in
6 accordance with the Wage Order.

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

11 75. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
12 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
13 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
14 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
15 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
16 to authorize and permit them to take 10-minute rest periods every four hours worked or major
17 fraction thereof.

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

22 77. Defendants failed to provide Plaintiff with all required rest breaks in accordance
23 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
24 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
25 which resulted in Defendants not providing the Class Members with all rest breaks required by
26 California law.

27 78. Defendants failed to pay Plaintiff the additional wages required by California
28 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and



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1 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
2 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
3 Class Members with additional wages for all rest breaks not provided to them as required by
4 California Labor Code § 226.7.

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

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

11 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
12 **LABOR CODE**

13 81. In relevant part, Labor Code section 558.1 states:

14
15 (a) Any employer or other person acting on behalf of an employer,
16 who violates, or causes to be violated, any provision regulating
17 minimum wages or hours and days of work in any order of the
18 Industrial Welfare Commission, or violates, or causes to be
19 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
20 held liable as the employer for such violation.

21
22 (b) For purposes of this section, the term "other person acting on
23 behalf of an employer" is limited to a natural person who is an
24 owner, director, officer, or managing agent of the employer, and
25 the term "managing agent" has the same meaning as in subdivision
26 (b) of Section 3294 of the Civil Code.

27
28 At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all



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1 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
2 Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian
3 directly or indirectly, or through an agent or other person, employed and exercised control over
4 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
5 the Labor Code and the Wage Order described above. On behalf of herself and all of the other
6 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
7 liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas
8 Vartanian that is the same as the award against the other Defendants on the same grounds for
9 which Plaintiff seeks against the other Defendants.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO INDEMNIFY**

12 **Lab. Code §§ 1198 and 2802**

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

14 82. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

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

22 86. As described above, the Defendants required Plaintiff and all of the other Class
23 Members to incur certain business expenses in the course of performing their duties. The
24 However, the Defendants did not provide these items and did not reimburse Plaintiff and the other
25 Class members for these items.

26 87. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
27 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
28 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred



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1 during the course of performing their duties.

2 88. By reason of the above, Plaintiff and the members of the class are entitled to
3 reimbursement for all necessary expenditures and losses and interest due and owing to them
4 within four years (4) of the date of the filing of the Complaint until the date of entry of judgment
5 pursuant to California Labor Code section 2802(b). Further, Plaintiff, on behalf of herself and the
6 class, prays for reasonable attorney's fees pursuant to Labor Code section 2802(c).

7 89. Additionally, with respect to this cause of action, on behalf of herself and the class,
8 Plaintiff prays for an award of reasonable attorney fees and costs, including interest thereon, as
9 permitted by law, all in amounts subject to proof.

10 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
11 **LABOR CODE**

12 90. In relevant part, Labor Code section 558.1 states:

13
14 (a) Any employer or other person acting on behalf of an employer,
15 who violates, or causes to be violated, any provision regulating
16 minimum wages or hours and days of work in any order of the
17 Industrial Welfare Commission, or violates, or causes to be
18 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
19 held liable as the employer for such violation.

20
21 (b) For purposes of this section, the term "other person acting on
22 behalf of an employer" is limited to a natural person who is an
23 owner, director, officer, or managing agent of the employer, and
24 the term "managing agent" has the same meaning as in subdivision
25 (b) of Section 3294 of the Civil Code.

26
27 At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all
28 of the other Class Members, and/or "owner," "managing agent," and/or "officer" of the



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Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related relief against Rafi Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the other Defendants.

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

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

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

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

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

A. Gross wages earned;

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

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

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

E. Net wages earned;

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



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

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

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

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

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

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

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

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

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

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

28 95. As alleged herein, at all relevant times during the applicable limitations period,



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

14 96. 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 97. 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).

28 ///



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1 **B. FAILURE TO PROVIDE NOTICE OF AVAILABLE SICK LEAVE**

2 98. Labor Code § 246 states

3
4 An employer shall provide an employee with written notice that sets forth the
5 amount of paid sick leave available, or paid time off leave an employer provides
6 in lieu of sick leave, for use on either the employee's itemized wage statement
7 described in Section 226 or in a separate writing provided on the designated pay
8 date with the employee's payment of wages.
9

10 Lab.Code § 246(h) (effective July 1, 2015). As a matter of policy and practice, the Defendants
11 failed to provide Plaintiff and all of the other Class Members with an itemized wage statement or
12 separate writing that set forth the amount of paid sick leave available.

13 99. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
14 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
15 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
16 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
17 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
18 also entitled to an award of costs and reasonable attorneys' fees.

19 **C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
20 **LABOR CODE**

21 100. In relevant part, Labor Code section 558.1 states:

22
23 (a) Any employer or other person acting on behalf of an employer,
24 who violates, or causes to be violated, any provision regulating
25 minimum wages or hours and days of work in any order of the
26 Industrial Welfare Commission, or violates, or causes to be
27 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
28 held liable as the employer for such violation.



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(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the other Defendants.

SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(Lab. Code §§ 201, 202, and 203)

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

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

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

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

104. Labor Code § 202 provides that all earned and unpaid wages of an employee who



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quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

105. The Defendants failed to pay Apodaca and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Plaintiff, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. Additionally, the Defendants failed to issue to Plaintiff and all of the other Class members whose employment ended their final paychecks until several days after their termination.

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

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

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

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

109. In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the



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1 Industrial Welfare Commission, or violates, or causes to be
2 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
3 held liable as the employer for such violation.
4

5 (b) For purposes of this section, the term “other person acting on
6 behalf of an employer” is limited to a natural person who is an
7 owner, director, officer, or managing agent of the employer, and
8 the term “managing agent” has the same meaning as in subdivision
9 (b) of Section 3294 of the Civil Code.
10

11 At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all
12 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
13 Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian
14 directly or indirectly, or through an agent or other person, employed and exercised control over
15 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
16 the Labor Code and the Wage Order described above. On behalf of herself and all of the other
17 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
18 liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas
19 Vartanian that is the same as the award against the other Defendants on the same grounds for
20 which Plaintiff seeks against the other Defendants.

21 **SEVENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

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

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

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

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



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112. 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.

113. 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 regular wages, minimum wages, overtime wages, doubletime wages, missed meal period premium wages, missed rest period premium wages, sick leave pay, phone expenses, and comparable money and property.

114. 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.

115. 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

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

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

B. An order that Plaintiff be appointed class representative;

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

D. Unpaid wages, including minimum, regular, overtime, double-time, split shift, vacation, missed meal period, and missed rest period;

E. Liquidated damages;

F. Statutory penalties, including waiting time penalties;



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- G. Restitution;
- H. Declaratory relief;
- I. Actual damages;
- J. Pre-judgment interest;
- K. Costs of suit;
- L. Reasonable attorneys' fees; and
- M. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: 04 / 19 / 2024

By: 
DAVID G. SPIVAK, Attorneys for
Plaintiff(s), ARLENE APODACA, and
all others similarly situated



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EXHIBIT 4

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Attorneys for Plaintiff(s),
ARLENE APODACA, and all others similarly situated

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

ARLENE APODACA, on behalf of herself and
all others similarly situated, and the general
public, and as an "Aggrieved Employee" on
behalf of other "Aggrieved Employees" and the
State of California under the Private Attorneys
General Act of 2004,

Plaintiff(s),

vs.

R AND T OIL INCORPORATED, a California
corporation; RAFI BARTANIYAN, an
individual; THOMAS VARTANIAN, an
individual; and DOES 1–50, inclusive,

Defendant(s).

Case No.: ~~CVRI2402196~~ CVRI2402196

FIRST AMENDED CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (Lab Code §§2698, et seq.)

JURY TRIAL DEMANDED



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

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants R And T Oil
9 Incorporated, a California corporation, Rafi Bartaniyan, Thomas Vartanian, and Does 1 through
10 50, inclusive (collectively “Defendants”).

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

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

16 (B) Provide all meal periods;

17 (C) Authorize and permit all rest breaks;

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

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

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

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

22 (H) Issue statements of sick leave available;

23 (I) Timely pay wages during and upon termination of employment;

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

27 **II. THE PARTIES**

28 3. Plaintiff Arlene Apodaca is a resident of California. At all relevant times, Plaintiff



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1 was an “employee” within the meaning of Title 8 California Code of Regulations Section 11070,
2 and an “aggrieved employee” within the meaning of California Labor Code § 2699(c).

3 3. Defendant R And T Oil Incorporated is a corporation organized and existing under
4 the laws of California and also a citizen of California based on Plaintiff’s information and belief.

5 4. Defendant Rafi Bartaniyan is an individual and a citizen of California based on
6 Plaintiff’s information and belief.

7 5. Defendant Thomas Vartanian is an individual and a citizen of California based on
8 Plaintiff’s information and belief.

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

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

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

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



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1 **III. CLASS ALLEGATIONS**

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

7 11. **Class Definition:** The Class is defined as follows: All persons Defendants
8 employed or otherwise contracted with in California as non-exempt, hourly employees, including,
9 but not limited to cashiers, individuals performing work comparable to the aforementioned,
10 compensated comparably to the aforementioned, and individuals in similar positions, at any time
11 during the period beginning four years prior to the filing of this action and ending on the date that
12 final judgment is entered in this action (“Class” or “Class Members”).

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

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

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

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

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

28 C. Whether Defendants failed to authorize and permit the Class Members to



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1 take all rest periods in compliance with California law;

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

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

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

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

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

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

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

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

25 18. **Superiority:** A class action is vastly superior to other available means for fair and
26 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
27 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
28 and efficiently prosecute their common claims in a single forum without the unnecessary



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1 duplication of effort and expense that numerous individual actions would entail. In addition, the
2 monetary amounts due to many individual Class Members are likely to be relatively small and
3 would thus make it difficult, if not impossible, for individual Class Members to both seek and
4 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
5 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
6 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

7 **IV. STATEMENT OF FACTS**

8 19. The Wage Order applies to “all persons employed in the mercantile industry
9 whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage
10 Order defines “Mercantile Industry” to mean “any industry, business, or establishment operated
11 for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or
12 retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant
13 times during the applicable limitations period, Defendants, Plaintiff, and all of the Class Members
14 were covered by the Wage Order because Defendants operated, and Plaintiff, and all of the Class
15 Members worked for, one or more gas stations and convenience stores. Accordingly, Plaintiff and
16 all of the other Class Members are entitled to the protections the Wage Order provides.

17 20. On approximately October 14, 2023, Defendants began to employ Plaintiff in
18 Riverside, California in the position of hourly, non-exempt cashier. Defendants continuously
19 employed her in that capacity until on or about December 10, 2023 when her employment ended.

20 21. At all relevant times, the Defendants issued wages to Plaintiff and all of the other
21 Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant
22 times, the Defendants classified Plaintiff and all of the other Class Members as non-exempt
23 employees entitled to the protections of the Labor Code and the Wage Order.

24 22. At all relevant times, the Defendants failed to compensate Apodaca and all of the
25 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
26 Defendants only compensated Plaintiff and Class Members for their scheduled hours and failed
27 to compensate them for all hours worked including the work Defendants required Plaintiff and all
28 of the other Class Members to perform after their scheduled end time, including, but not limited



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1 to, closing duties, counting lottery tickets, and preparing and sending closing shift report to their
2 managers. Defendants required Plaintiff and all of the other Class Members to complete these
3 tasks after the scheduled end time without compensation. As a result, Defendants also failed to
4 compensate Plaintiff and all of the other Class Members at the correct rates of pay for all hours
5 worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of
6 the workweek. Defendants also failed to compensate Plaintiff and all of the other Class Members
7 at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the
8 seventh day of the workweek.

9 23. At all relevant times, Defendants failed to provide Plaintiff and all of the other
10 Class Members with all timely 30-minute, off-duty meal periods. Defendants scheduled Plaintiff
11 and the other Class Members to work alone at their stores. Defendants prohibited Plaintiff and
12 the Class Members from leaving their work premises during meal and/or rest breaks, required
13 them to monitor their cellphones and respond to their managers' communications and to attend to
14 the customers at all times. Defendants also failed to pay premium wages for days on which they
15 failed to provide Plaintiff and all of the other Class Members with meal periods as required by
16 law.

17 24. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
18 the other Class Members to take any ten-minute, off-duty, paid rest breaks every four hours
19 worked or major portion thereof. Defendants also failed to pay premium wages for days on which
20 they failed to authorize and permit Plaintiff and all of the other Class Members to take rest breaks
21 as required by law.

22 25. At all relevant times, Defendants failed to provide paid sick leave to Plaintiff and
23 all of the other Class Members.

24 26. At all relevant times, Defendants required Plaintiff and all of the other Class
25 Members to incur certain business expenses in the course of performing their duties. Defendants
26 required Plaintiff and all of the other Class Members to supply their personal mobile phones to
27 perform their job duties including but not limited to, communicating with their managers and
28 sending them closing shift reports and to update them and confirm their locations. However,



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1 Defendants did not provide these items and did not reimburse Plaintiff and the other Class
2 Members for these items.

3 27. At all relevant times, Defendants failed to issue to Plaintiff and all of the other
4 Class Members complete and accurate wage statements that state all hours worked at the correct
5 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
6 wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
7 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
8 earned, all overtime wages earned, all meal period premium wages earned, all doubletime wages
9 earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages
10 earned, the correct address of employer, all hours work at each rate of pay, sick pay hours, and
11 related information.

12 28. At all relevant times, the Defendants failed to provide Plaintiff and all of the other
13 Class Members with statements of sick leave available, or paid time off in lieu of sick leave.

14 29. At all relevant times, Defendants also failed to timely pay Plaintiff and all of the
15 other Class Members all earned wages as described above during and at the conclusion of
16 employment. Plaintiff and the Class Members also had to wait weeks to receive their payment for
17 their training period.

18 30. Defendants failed to provide Plaintiff and all of the other Class Members with
19 suitable seats. Defendants provided Plaintiff and all of the other Class Members seats that caused
20 them unnecessary strain and discomfort.

21 31. At all relevant times, the Defendants failed to maintain accurate employee records
22 of Plaintiff and all of the other Class Members.

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

- 25 A. Not provided with all off duty meal periods;
26 B. Not authorized and permitted to take all rest break periods;
27 C. Not paid one hour's pay for each workday in which Defendants failed to
28 authorize and permit them to take one or more timely rest periods;



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1 D. Not paid one hour's pay for each workday in which Defendants failed to
2 provide them with one or more timely meal periods;

3 E. Not paid all wages earned, including, but not limited to, minimum, regular,
4 overtime, and doubletime wages for all hours worked at the correct rates of pay;

5 F. Not indemnified for all necessary business expenditures incurred during
6 the discharge of their duties;

7 G. Not provided with accurate and complete wage statements; and

8 H. Not timely paid all earned and unpaid wages at the time their employment
9 ended.

10 **FIRST CAUSE OF ACTION**

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

13 **Lab. Code §§ 510, 1194, 1197, and 1198**

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

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

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

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

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

23 36. Section 3 of the Wage Order states:

24
25 The following overtime provisions are applicable to employees 18 years of age or
26 over and to employees 16 or 17 years of age who are not required by law to attend
27 school and are not otherwise prohibited by law from engaging in the subject work.

28 Such employees shall not be employed more than eight (8) hours in any workday



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1 or more than 40 in a workweek unless the employee receives one and one half
2 (1½) times such employee's regular rate of pay for all hours worked over 40 hours
3 in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
4 beyond eight (8) hours in any workday or more than six (6) days in any workweek
5 is permissible provided the employee is compensated for such overtime at not less
6 than:

7
8 (a) One and one-half (1½) times the employee's regular rate of pay for all
9 hours worked in excess of eight (8) hours up to and including twelve (12)
10 hours in any workday, and for the first eight (8) hours worked on the
11 seventh (7th) consecutive day of work in a workweek;

12
13 (b) Double the employee's regular rate of pay for all hours worked in excess
14 of 12 hours in any workday and for all hours worked in excess of eight (8)
15 hours on the seventh (7th) consecutive day of work in a workweek. The
16 overtime rate of compensation required to be paid to a nonexempt full-
17 time salaried employee shall be computed by using the employee's regular
18 hourly salary as one fortieth (1/40) of the employee's weekly salary.
19

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

23 38. Labor Code section 510 states:

24
25 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
26 in one workday and any work in excess of 40 hours in any one workweek and the
27 first eight hours worked on the seventh day of work in any one workweek shall be
28 compensated at the rate of no less than one and one-half times the regular rate of



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1 pay for an employee. Any work in excess of 12 hours in one day shall be
2 compensated at the rate of no less than twice the regular rate of pay for an
3 employee. In addition, any work in excess of eight hours on any seventh day of a
4 workweek shall be compensated at the rate of no less than twice the regular rate of
5 pay of an employee. Nothing in this section requires an employer to combine more
6 than one rate of overtime compensation in order to calculate the amount to be paid
7 to an employee for any hour of overtime work.
8

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

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

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

16 42. In conjunction, these provisions of the Labor Code require employers to pay non-
17 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
18 worked, including unrecorded hours when the employer knew or reasonably should have known
19 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
20 Cal.4th 575, 585.)

21 43. As discussed above, at all relevant times during the applicable limitations period,
22 Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including,
23 but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular,
24 overtime and doubletime hours, respectively, that they worked at the correct rates of pay.

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



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1 45. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class
2 Members, seek to recover unpaid wages, liquidated damages in amounts equal to the amounts of
3 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
4 subject to proof.

5 46. Additionally, with respect to this cause of action, on behalf of herself and the class,
6 Plaintiff prays for an award of reasonable costs and attorneys' fees, including interest thereon, as
7 permitted by law, all in amounts subject to proof.

8 **B. FAILURE TO PROVIDE SICK LEAVE**

9 47. Labor Code section 233 states

10
11 Any employer who provides sick leave for employees shall permit an
12 employee to use in any calendar year the employee's accrued and available
13 sick leave entitlement, in an amount not less than the sick leave that would
14 be accrued during six months at the employee's then current rate of
15 entitlement, for the reasons specified in subdivision (a) of Section 246.5.

16
17 48. Labor Code section 246(a)(1) states

18
19 An employee who, on or after July 1, 2015, works in California for the
20 same employer for 30 or more days within a year from the commencement
21 of employment is entitled to paid sick days as specified in this section.

22
23 49. Labor Code section 246.5 states

24
25 (a) Upon the oral or written request of an employee, an employer shall
26 provide paid sick days for the following purposes:

27
28 (1) Diagnosis, care, or treatment of an existing health



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condition of, or preventive care for, an employee or an employee's family member.

...

(c) (1) An employer shall not deny an employee the right to use accrued sick days ...

50. The Defendants failed to provide Plaintiff and all of the other Class Members with paid sick leave.

51. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiff and the other Class Members sick leave as required by California law.

C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

52. In relevant part, Labor Code section 558.1 states:

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

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.



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1
2 At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all
3 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
4 Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian
5 directly or indirectly, or through an agent or other person, employed and exercised control over
6 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
7 the Labor Code and the Wage Order described above. On behalf of herself and all of the other
8 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
9 liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas
10 Vartanian that is the same as the award against the other Defendants on the same grounds for
11 which Plaintiff seeks against the other Defendants.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **Lab. Code §§ 226.7 and 512**

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

16 53. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

20 55. In relevant part, California Labor Code § 1198 states:

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

26
27 56. In relevant part, In relevant part, California Labor Code § 512 states:



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

7
8 An employer shall not employ an employee for a work period of
9 more than 10 hours per day without providing the employee with
10 a second meal period of not less than 30 minutes, except that if the
11 total hours worked is no more than 12 hours, the second meal
12 period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.

14
15 57. In relevant part, Section 11 of the Wage Order states:

16
17 Meal Periods:

18
19 (A) No employer shall employ any person for a work period of more
20 than five (5) hours without a meal period of not less than 30
21 minutes, except that when a work period of not more than six (6)
22 hours will complete the day's work the meal period may be waived
23 by mutual consent of the employer and the employee.

24
25 (B) An employer may not employ an employee for a work period of
26 more than ten (10) hours per day without providing the employee
27 with a second meal period of not less than 30 minutes, except that
28 if the total hours worked is no more than 12 hours, the second meal



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

3
4 (C) Unless the employee is relieved of all duty during a 30 minute meal
5 period, the meal period shall be considered an "on duty" meal
6 period and counted as time worked. An "on duty" meal period shall
7 be permitted only when the nature of the work prevents an
8 employee from being relieved of all duty and when by written
9 agreement between the parties an on-the-job paid meal period is
10 agreed to. The written agreement shall state that the employee
11 may, in writing, revoke the agreement at any time.

12
13 (D) If an employer fails to provide an employee a meal period in
14 accordance with the applicable provisions of this Order, the
15 employer shall pay the employee one (1) hour of pay at the
16 employee's regular rate of compensation for each workday that the
17 meal period is not provided.

18
19 (E) In all places of employment where employees are required to eat
20 on the premises, a suitable place for that purpose shall be
21 designated.

22
23 58. In relevant part, California Labor Code § 226.7 states:

24
25 (b) An employer shall not require an employee to work during
26 a meal or rest period mandated pursuant to an applicable
27 statute, or applicable regulation, standard, or order of the
28 Industrial Welfare Commission, the Occupational Safety



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1 and Health Standards Board, or the Division of
2 Occupational Safety and Health.

3
4 (c) If an employer fails to provide an employee a meal period
5 or rest period in accordance with a state law, including, but
6 not limited to, an applicable statute or applicable
7 regulation, standard, or order of the Industrial Welfare
8 Commission, the Occupational Safety and Health
9 Standards Board, or the Division of Occupational Safety
10 and Health, the employer shall pay the employee one
11 additional hour of pay at the employee's regular rate of
12 compensation for each work day that the meal or rest
13 period is not provided.
14

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

19 60. Defendants intentionally failed to provide Plaintiff and the Class Members with
20 all required 30-minute duty free meal periods in accordance with the Wage Order.

21 61. As discussed above, at all relevant times, Defendants failed to provide Plaintiff
22 and the Class Members with all timely, duty-free meal periods. Furthermore, Defendants failed
23 to pay premium wages for days on which they failed to provide Plaintiff and the other Class
24 Members with timely meal periods.

25 62. Plaintiff is informed and believes and thereon alleges that, at all relevant times
26 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
27 which resulted in Defendants not providing the and the Class Members with all off-duty meal
28 periods required by California law.



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63. 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 meal periods not provided to them.

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

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

65. In relevant part, Labor Code section 558.1 states:

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

(d) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to



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1 the Labor Code and the Wage Order described above. On behalf of herself and all of the other
2 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
3 liquidated damages, attorneys' fees, costs, and related relief against Rafi Bartaniyan and Thomas
4 Vartanian that is the same as the award against the other Defendants on the same grounds for
5 which Plaintiff seeks against the other Defendants.

6 **THIRD CAUSE OF ACTION**

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

8 **Lab. Code §§ 226.7 and 1198**

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

10 66. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

11 67. 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 California Labor Code §§ 226.7 and 1198, and the Wage Order.

14 68. In relevant part, California Labor Code § 1198 states:

15
16 The maximum hours of work and the standard conditions of labor
17 fixed by the commission shall be the maximum hours of work and
18 the standard conditions of labor for employees. The employment
19 of any employee for longer hours than those fixed by the order or
20 under conditions of labor prohibited by the order is unlawful.

21
22 69. In relevant part, Section 12 of the Wage Order states:

23
24 Rest Periods:

25
26 (A) Every employer shall authorize and permit all employees to take
27 rest periods, which insofar as practicable shall be in the middle of
28 each work period. The authorized rest period time shall be based



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

7
8 (B) If an employer fails to provide an employee a rest period in
9 accordance with the applicable provisions of this order, the
10 employer shall pay the employee one (1) hour of pay at the
11 employee's regular rate of compensation for each workday
12 that the rest period is not provided.

13
14 70. In relevant part, California Labor Code § 226.7 states:

15
16 (b) An employer shall not require an employee to work during
17 a meal or rest period mandated pursuant to an applicable
18 statute, or applicable regulation, standard, or order of the
19 Industrial Welfare Commission, the Occupational Safety
20 and Health Standards Board, or the Division of
21 Occupational Safety and Health.

22
23 (c) If an employer fails to provide an employee a meal period
24 or rest period in accordance with a state law, including, but
25 not limited to, an applicable statute or applicable
26 regulation, standard, or order of the Industrial Welfare
27 Commission, the Occupational Safety and Health
28 Standards Board, or the Division of Occupational Safety



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1 and Health, the employer shall pay the employee one
2 additional hour of pay at the employee's regular rate of
3 compensation for each work day that the meal or rest
4 period is not provided.
5

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

9 72. As discussed above, Defendants intentionally failed to authorize and permit
10 Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in
11 accordance with the Wage Order.

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

16 74. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
17 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
18 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
19 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
20 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
21 to authorize and permit them to take 10-minute rest periods every four hours worked or major
22 fraction thereof.

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

27 76. Defendants failed to provide Plaintiff with all required rest breaks in accordance
28 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times



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1 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
2 which resulted in Defendants not providing the Class Members with all rest breaks required by
3 California law.

4 77. Defendants failed to pay Plaintiff the additional wages required by California
5 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
6 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
7 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
8 Class Members with additional wages for all rest breaks not provided to them as required by
9 California Labor Code § 226.7.

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

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

16 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
17 **LABOR CODE**

18 80. In relevant part, Labor Code section 558.1 states:

19
20 (a) Any employer or other person acting on behalf of an employer,
21 who violates, or causes to be violated, any provision regulating
22 minimum wages or hours and days of work in any order of the
23 Industrial Welfare Commission, or violates, or causes to be
24 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
25 held liable as the employer for such violation.

26
27 (b) For purposes of this section, the term "other person acting on
28 behalf of an employer" is limited to a natural person who is an



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

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the other Defendants.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code §§ 1198 and 2802

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

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

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

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

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

85. As described above, the Defendants required Plaintiff and all of the other Class Members to incur certain business expenses in the course of performing their duties. The



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1 However, the Defendants did not provide these items and did not reimburse Plaintiff and the other
2 Class members for these items.

3 86. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
5 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
6 during the course of performing their duties.

7 87. By reason of the above, Plaintiff and the members of the class are entitled to
8 reimbursement for all necessary expenditures and losses and interest due and owing to them
9 within four years (4) of the date of the filing of the Complaint until the date of entry of judgment
10 pursuant to California Labor Code section 2802(b). Further, Plaintiff, on behalf of herself and the
11 class, prays for reasonable attorney's fees pursuant to Labor Code section 2802(c).

12 88. Additionally, with respect to this cause of action, on behalf of herself and the class,
13 Plaintiff prays for an award of reasonable attorney fees and costs, including interest thereon, as
14 permitted by law, all in amounts subject to proof.

15 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
16 **LABOR CODE**

17 89. In relevant part, Labor Code section 558.1 states:

18
19 (a) Any employer or other person acting on behalf of an employer,
20 who violates, or causes to be violated, any provision regulating
21 minimum wages or hours and days of work in any order of the
22 Industrial Welfare Commission, or violates, or causes to be
23 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
24 held liable as the employer for such violation.

25
26 (b) For purposes of this section, the term "other person acting on
27 behalf of an employer" is limited to a natural person who is an
28 owner, director, officer, or managing agent of the employer, and



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

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the other Defendants.

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

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

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

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

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

A. Gross wages earned;

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

C. The number of piece rate units earned and any applicable piece rate if the



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1 employee is paid on a piece-rate basis;

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

4 E. Net wages earned;

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

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

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

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

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

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

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

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

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



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

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

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

19 95. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
20 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
21 the other Class Members with accurate wage statements but intentionally provided wage
22 statements that Defendants knew were not accurate.

23 96. As a result of being provided with inaccurate wage statements by Defendants,
24 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
25 wage statements were violated and they were misled about the amount of wages they had actually
26 earned and were owed. In addition, the absence of accurate information on their wage statements
27 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery
28 and mathematical computations to determine the amounts of wages owed, has caused difficulty



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1 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
2 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
3 and the other Class Members were not able to ascertain from the wage statements whether
4 Defendants complied with their obligations under California Labor Code section 226(a).

5 **B. FAILURE TO PROVIDE NOTICE OF AVAILABLE SICK LEAVE**

6 97. Labor Code § 246 states

7
8 An employer shall provide an employee with written notice that sets forth the
9 amount of paid sick leave available, or paid time off leave an employer provides
10 in lieu of sick leave, for use on either the employee's itemized wage statement
11 described in Section 226 or in a separate writing provided on the designated pay
12 date with the employee's payment of wages.

13
14 Lab.Code § 246(h) (effective July 1, 2015). As a matter of policy and practice, the Defendants
15 failed to provide Plaintiff and all of the other Class Members with an itemized wage statement or
16 separate writing that set forth the amount of paid sick leave available.

17 98. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
18 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
19 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
20 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
21 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
22 also entitled to an award of costs and reasonable attorneys' fees.

23 **C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
24 **LABOR CODE**

25 99. In relevant part, Labor Code section 558.1 states:

26
27 (a) Any employer or other person acting on behalf of an employer,
28 who violates, or causes to be violated, any provision regulating



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1 minimum wages or hours and days of work in any order of the
2 Industrial Welfare Commission, or violates, or causes to be
3 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
4 held liable as the employer for such violation.

5
6 (b) For purposes of this section, the term “other person acting on
7 behalf of an employer” is limited to a natural person who is an
8 owner, director, officer, or managing agent of the employer, and
9 the term “managing agent” has the same meaning as in subdivision
10 (b) of Section 3294 of the Civil Code.

11
12 At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all
13 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
14 Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian
15 directly or indirectly, or through an agent or other person, employed and exercised control over
16 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
17 the Labor Code and the Wage Order described above. On behalf of herself and all of the other
18 Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
19 liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas
20 Vartanian that is the same as the award against the other Defendants on the same grounds for
21 which Plaintiff seeks against the other Defendants.

22 **SIXTH CAUSE OF ACTION**

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

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

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

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

27 101. At all relevant times during the applicable limitations period, Plaintiff and the

28 Class have been non-exempt employees of Defendants and entitled to the benefits and protections



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1 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

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

4 103. Labor Code § 202 provides that all earned and unpaid wages of an employee who
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of
6 quitting and that all earned and unpaid wages of an employee who quits without providing at least
7 72-hours notice before quitting are due and payable within 72 hours.

8 104. The Defendants failed to pay Apodaca and all of the other Class Members whose
9 employment ended all of the earned but unpaid wages described above by the conclusion of their
10 employment with Plaintiff, including minimum wages, regular wages, overtime wages,
11 doubletime wages, unprovided meal period premium wages, unprovided rest break premium
12 wages, and other compensation. Additionally, the Defendants failed to issue to Plaintiff and all of
13 the other Class members whose employment ended their final paychecks until several days after
14 their termination.

15 105. By failing to pay such earned wages to Plaintiff and the Class Members,
16 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
17 § 201 or § 202.

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

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

26 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
27 **LABOR CODE**

28 108. In relevant part, Labor Code section 558.1 states:



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

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Rafi Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the other Defendants.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

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

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

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

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

14 112. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
15 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
16 Members were deprived of regular wages, minimum wages, overtime wages, doubletime wages,
17 missed meal period premium wages, missed rest period premium wages, sick leave pay, phone
18 expenses, and comparable money and property.

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

23 114. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
24 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
25 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

26 ///

27 ///

28 ///



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EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

Lab Code §§2698, et seq.)

(By Plaintiff and the Aggrieved Employees against all Defendants)

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

116. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning April 19, 2023 and ending on the date that final judgment is entered in this action.

117. 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.

118. 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.

119. 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.

120. 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).

121. 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.

122. 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, and the employer's name and address. 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.

137. Section 14 of the Wage Order states as follows:

Seats.

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

123. The nature of the work Defendants expected Plaintiff and all of the other Aggrieved Employees to perform reasonably permits the use of seats. However, Defendants, in violation of the Wage Order and Labor Code § 1198, did not provide Plaintiffs and all of the other Aggrieved Employees with suitable seats.

124. During the applicable time period, Defendants violated California Labor Code §§



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201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558.1, 1174, 1194, 1197, 1198, and 2802.

125. 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.

126. 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, 226, 226.7, 233, 246, 246.5, 510, 512, 558.1, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 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).

C. 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).

D. 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).

E. 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).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233, 246, 246.5, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per



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1 pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
2 Employee per pay period for each subsequent violation (penalty amounts established by
3 California Labor Code § 2699(f)(2)).

4 127. In relevant part, Labor Code section 558.1 states:

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

10 (d) For purposes of this section, the term “other person acting on
11 behalf of an employer” is limited to a natural person who is an
12 owner, director, officer, or managing agent of the employer, and
13 the term “managing agent” has the same meaning as in subdivision
14 (b) of Section 3294 of the Civil Code.

15 128. At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of
16 Plaintiff and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or
17 “officer” of the Defendants and the other employers identified above. Rafi Bartaniyan and
18 Thomas Vartanian directly or indirectly, or through an agent or other person, employed and
19 exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees,
20 and caused the violations to the Labor Code and the Wage Order described above. On behalf of
21 herself and all of the other Aggrieved Employees, Plaintiff seeks same civil penalties against Rafi
Bartaniyan and Thomas Vartanian that is the same as the award against the other Defendants on
the same grounds for which Plaintiff seeks against the other Defendants.

22 129. Plaintiff has complied with the procedures for bringing suit specified in California
23 Labor Code § 2699.3. By a letter dated April 19, 2024, Plaintiff filed a written notice online with
24 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
25 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
26 violated, including the facts and theories to support the alleged violations. A true and correct copy
27 of the notice to the LWDA dated April 19, 2024 is attached as **Exhibit A**. Plaintiff accompanied
28 her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the



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1 LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate
2 these allegations.

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

6 **V. PRAYER FOR RELIEF**

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

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

11 B. An order that Plaintiff be appointed class representative;

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

13 D. Unpaid wages, including minimum, regular, overtime, double-time, split
14 shift, vacation, missed meal period, and missed rest period;

15 E. Liquidated damages;

16 F. Statutory penalties, including waiting time penalties;

17 G. Civil penalties;

18 H. Restitution;

19 I. Declaratory relief;

20 J. Actual damages;

21 K. Pre-judgment interest;

22 L. Costs of suit;

23 M. Reasonable attorneys' fees; and

24 ///

25 ///

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

VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: 06 / 25 / 2024

By: 
DAVID G. SPIVAK,
CAROLINE TAHMASSIAN,
Attorneys for Plaintiff(s), ARLENE
APODACA, and all others similarly
situated



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EXHIBIT A



THE SPIVAK LAW FIRM
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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 19, 2024

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

Re: Arlene Apodaca / R And T Oil Incorporated

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Arlene Apodaca (hereafter “Apodaca” or “Complainant”) provides notice that Rafi Bartaniyan, Thomas Vartanian, R And T Oil Incorporated, a California corporation, and related entities (collectively “the R&T Oil Employers” or “the Employers”) violated her rights and those of all other individuals the R&T Oil Employers have employed or otherwise contracted with in California as non-exempt, hourly employees, including, but not limited to cashiers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1174, 1194, 1197, 1198, 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Apodaca hereby provides this notice to the Labor & Workforce Development Agency and the R&T Oil Employers and their agents and representatives.

At all relevant times, the R&T Oil Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Apodaca and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately October 14, 2023, the R&T Oil Employers began to employ Apodaca in Riverside, California in the position of hourly, non-exempt cashier. The R&T Oil Employers continuously employed her in that capacity until on or about December 10, 2023 when her employment ended.

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

The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The R&T Oil Employers only compensated Apodaca and Aggrieved Employees for their scheduled hours and failed to compensate them for all hours worked including the work. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to perform after their scheduled end time, including, but not limited to, closing duties, counting lottery tickets, and preparing and sending closing shift report to their managers. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to complete these tasks after the scheduled end time without compensation. As a result, the R&T Oil Employers also failed to compensate Apodaca 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 R&T Oil Employers also failed to compensate Apodaca 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.

At all relevant times, the R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The R&T Oil Employers scheduled Apodaca and the other Aggrieved Employees to work alone at their stores. The R&T Employers prohibited Apodaca and the Aggrieved Employees from leaving their work premises during meal and/or rest breaks, required them to monitor their cellphones and respond to their managers' communications and to attend to the customers at all times. The R&T Oil Employers also failed to pay premium

wages for days on which they failed to provide Apodaca and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the R&T Oil Employers failed to authorize and permit Apodaca and all of the other Aggrieved Employees to take any ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The R&T Oil Employers also failed to pay premium wages for days on which they failed to authorize and permit Apodaca and all of the other Aggrieved Employees to take rest breaks as required by law.

The R&T Oil Employers failed to provide paid sick leave to Apodaca and all of the other Aggrieved Employees.

At all relevant times, the R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to supply their personal mobile phones to perform their job duties including but not limited to, communicating with their managers and sending them closing shift reports and to update them and confirm their locations. However, the R&T Oil Employers did not provide these items and did not reimburse Apodaca and the other Aggrieved Employees for these items.

At all relevant times, the R&T Oil Employers failed to issue to Apodaca 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 R&T Oil Employers knowingly and intentionally failed to state on the wage statements they issued to Apodaca 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 doubletime wages earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages earned, the correct address of employer, all hours work at each rate of pay, sick pay hours, and related compensation.

The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave.

The R&T Oil Employers also failed to timely pay Apodaca and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Apodaca and the Aggrieved Employees also had to wait weeks to receive their payment for their training period.

The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with suitable seats. The R&T Oil Employers provided Apodaca and all of the other Aggrieved Employees seats that caused them unnecessary strain and discomfort.

The R&T Oil Employers failed to maintain accurate employee records of Apodaca and all of the other Aggrieved Employees.

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

- (a) The R&T Oil Employers failed to pay Apodaca and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The R&T Oil Employers failed to provide paid sick leave to Apodaca and all of the other Aggrieved Employees;
- (c) The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (d) The R&T Oil Employers failed to authorize and permit Apodaca and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (e) The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees at one hour's pay for each day in which the R&T Oil Employers failed to provide them with one or more meal periods as required by law;

- (f) The R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees at one hour's pay for each day in which the R&T Oil Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (g) The R&T Oil Employers failed to indemnify Apodaca and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (h) The R&T Oil Employers knowingly and intentionally failed to issue to Apodaca and all of the other Aggrieved Employees accurate and complete wage statements;
- (i) The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave;
- (j) The R&T Oil Employers willfully failed to timely pay Apodaca and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the R&T Oil Employers and when their employment ended;
- (k) The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with suitable seats; and
- (l) The R&T Oil Employers failed to maintain accurate employment records pertaining to Apodaca and all of the other Aggrieved Employees.

Accordingly, Apodaca now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the R&T Oil Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment

operated for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant times during the applicable limitations period, the “Employers, Apodaca, and all of the Aggrieved Employees were covered by the Wage Order because the R&T Oil Employers operated, and Apodaca, and all of the Aggrieved Employees worked for, one or more gas stations and convenience stores. Accordingly, Apodaca and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than

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

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

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

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

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

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

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

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

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

Failure To Provide Sick Leave
(Labor Code §§ 233, 246, and 246.5)

Labor Code section 233 states,

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

Labor Code section 246(a)(1) states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Labor Code section 246.5 states,

- (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:
 - (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
 - ...
- (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with paid sick leave. Accordingly, Apodaca now seeks civil penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

1. For violations of Labor Code section 233, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 233 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 233 occurred (penalties set by Labor Code section 2699(f)(2));

2. For violations of Labor Code section 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 246.5, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246.5 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246.5 occurred (penalties set by Labor Code section 2699(f)(2)).

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

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

As discussed above, at all relevant times, the R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with all timely and duty-free, 30-minute meal periods, including, but not limited to, a second meal period when they worked more than 10 hours in a workday. Furthermore, the R&T Oil Employers failed to pay premium wages for days on which they failed to provide Apodaca and all of the other Aggrieved Employees with meal periods in accordance with California law. Accordingly, Apodaca now seeks civil penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

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

3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Section 2(G) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

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

As discussed above, at all relevant times, the R&T Oil Employers failed to authorize and permit Apodaca 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 R&T Oil Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the R&T Oil Employers failed to pay Apodaca and all of the other Aggrieved Employees premium wages on workdays the R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Apodaca now seeks civil penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

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

Additionally, the Wage Order states,

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

...

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

Wage Order, §§ 9(A) and (B).

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

As described above, the R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The R&T Oil Employers required Apodaca and all of the other Aggrieved Employees to supply personal mobile phones to perform their job duties. However, the R&T Oil Employers did not provide these items and did not reimburse Apodaca and the other Aggrieved Employees for these items. Accordingly, Apodaca seeks civil

penalties for these Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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 R&T Oil 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 R&T Oil Employers failed to state in the wage statements they issued to Apodaca 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 without compensation (as described above). The R&T Oil Employers knowingly and intentionally failed to state on the wage statements they issued to Apodaca 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 doubletime wages earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages earned, the correct address of employer, all hours work at each rate of pay, and related compensation. Accordingly, Apodaca seeks civil penalties for the Labor Code violations that the R&T Oil Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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Failure To Provide Notice of Available Sick Leave
(Labor Code § 246)

Labor Code § 246 states,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). The R&T Oil Employers failed to provide Apodaca and all of the other Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Apodaca seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

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 R&T Oil Employers failed to compensate Apodaca and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, training pay, and related compensation, at the intervals stated above.

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

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 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 R&T Oil Employers failed to pay Apodaca 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 Apodaca, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. Additionally, the R&T Oil Employers failed to issue to Apodaca and all of the other Aggrieved Employees whose employment ended their final paychecks until several days after the

termination or resignation. By failing to pay Apodaca and all of the other Aggrieved Employees as set forth above at the end of employment, the R&T Oil Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Apodaca seeks civil penalties from the R&T Oil 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 Provide Suitable Seats
(Lab. Code § 1198)

Section 14 of the Wage Order states as follows:

Seats.

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

The nature of the work the R&T Oil Employers expected Apodaca and all of the other Aggrieved Employees to perform reasonably permits the use of seats. However, the R&T Oil Employers, in violation of the Wage Order and Labor Code § 1198, did not provide Apodaca and all of the other Aggrieved Employees with suitable seats.

Pursuant to Labor Code Sections 2699(a) and (f), Apodaca, on behalf of herself and all of the other Aggrieved Employees, seeks \$100.00 for each employee per pay period for each initial violation of § 1198 and \$200.00 for each employee per pay period for each subsequent violation of § 1198 (penalty amounts established by Labor Code Section 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 R&T Oil Employers failed to compensate Apodaca 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 doubletime wages earned, all rest break premium wages earned, all earned sick pay, net wages earned, gross wages earned, address of employer, all hours work at each rate of pay, and related compensation. As a result, the R&T Oil Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Apodaca and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Apodaca seeks civil penalties on behalf of herself 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)).

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

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be

violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Rafi Bartaniyan and Thomas Vartanian were employers of Apodaca and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the R&T Oil Employers and the other employers identified above. Rafi Bartaniyan and Thomas Vartanian directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Aggrieved Employees, Apodaca seeks the same civil penalties against Rafi Bartaniyan and Thomas Vartanian on the same grounds for which she seeks civil penalties against the R&T Oil Employers.

Conclusion

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

Sincerely,



David Glenn Spivak Esq.

david@spivaklaw.com

cc: Arlene Apodaca

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LWDA / The R&T Oil Employers

Re: Arlene Apodaca

4/19/2024

Page 25 of 25

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EXHIBIT 5

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BARTANIYAN, and THOMAS VARTANIAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE – RIVERSIDE HISTORIC COURTHOUSE

ARLENE APODACA, on behalf of herself and
all others similarly situated, and the general
public, and as an “Aggrieved Employee” on
behalf of other “Aggrieved Employees” and the
State of California under the Private Attorneys
General Act of 2004

Plaintiff(s),

v.

R AND T OIL INCORPORATED, a California
corporation; RAFI BARTANIYAN, an
individual; THOMAS VARTANIAN, an
individual; and DOES 1-50, inclusive,

Defendant(s).

CASE NO. CVRI2402196

**DEFENDANTS R AND T OIL
INCORPORATED, RAFI BARTANIYAN, AND
THOMAS VARTANIAN’S ANSWER TO
PLAINTIFF’S FIRST AMENDED
COMPLAINT**

COMES NOW, Defendants R AND T OIL INCORPORATED, RAFI BARTANIYAN, and
THOMAS VARTANIAN (hereinafter collectively “Defendants”), and them only, respond to Plaintiff
ARLENE APODACA’S (hereinafter “Plaintiff”) First Amended Complaint (“Complaint”) for
themselves, and no others, as follows:

1. Pursuant to the provisions of Section 431.30 of the *California Code of Civil
Procedure*, these answering Defendants deny generally and specifically, each and every and all of the
allegations contained in each paragraph of each cause of action of said Plaintiff’s Complaint, and in
particular deny that Plaintiff was damaged in the sums alleged or in any other manner, or sum, or any
sum or at all.

1 FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE

2 THESE ANSWERING DEFENDANTS ALLEGE:

3 These answering Defendants are informed and believe and thereon allege that Plaintiff has
4 delayed an unreasonable period of time in bringing this action, which delay has been prejudicial to
5 Defendants and, as such, Plaintiff is barred from asserting the claims stated in the Complaint under
6 the doctrine of laches.

7 FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE

8 THESE ANSWERING DEFENDANTS ALLEGE:

9 These answering Defendants are informed and believe and thereon allege that any injuries
10 and/or damage Plaintiff has allegedly suffered were due to her own wrongful conduct, and pursuant
11 to the equitable doctrine of “unclean hands”, thus Plaintiff is precluded from any recovery
12 whatsoever.

13 FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE

14 THESE ANSWERING DEFENDANTS ALLEGE:

15 These answering Defendants are informed and believe and thereon allege that Plaintiff’s
16 actions constituted a full release and/or waiver by Plaintiff of any and all claims which Plaintiff may
17 have against Defendants. By reason of said release and/or waiver, Defendants are excused from
18 further performance.

19 FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE

20 THESE ANSWERING DEFENDANTS ALLEGE:

21 These answering Defendants are informed and believe and thereon allege that Plaintiff
22 breached its contract, if any, with Defendants, and that by reason of said breach of contract,
23 Defendants have been excused of its duties to perform all obligations set forth in said contract.

24 FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE

25 THESE ANSWERING DEFENDANTS ALLEGE:

26 These answering Defendants are informed and believe and thereon allege that the Plaintiff
27 herein and each and every cause of action contained in Plaintiff’s Complaint is barred by reason of
28 acts, omissions, representations, and courses of conduct by Plaintiff by which Defendants were led to
rely to its detriment, thereby barring, under the doctrine of equitable estoppel, any causes of action
asserted by the Plaintiff.

1 FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE

2 THESE ANSWERING DEFENDANTS ALLEGE:

3 These answering Defendants are informed and believe and thereon allege that the contract, if
4 any, was modified by the parties, and that Plaintiff is barred from recovery on the unmodified
5 original contract, if any, by reason of said modification.

6 FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE

7 THESE ANSWERING DEFENDANTS ALLEGE:

8 These answering Defendants are informed and believe and thereon allege that Plaintiff has
9 failed to mitigate his damages, if any.

10 FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE

11 THESE ANSWERING DEFENDANTS ALLEGE:

12 These answering Defendants are informed and believe and thereon allege that if there
13 presently exists or ever existed, any or all of the alleged rights, claims, or obligations which Plaintiff
14 seeks by way of the Complaint, each and every cause of action in the Complaint is barred by the
15 Statute of Limitations.

16 FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE

17 THESE ANSWERING DEFENDANTS ALLEGE:

18 These answering Defendants are informed and believe and thereon allege that each and every
19 cause of action described by Plaintiff have failed to set forth sufficient facts to constitute a cause of
20 action and/or any causes of action.

21 FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE

22 THESE ANSWERING DEFENDANTS ALLEGE:

23 These answering Defendants are informed and believe and thereon allege as an affirmative
24 defense to the Complaint and each cause of action thereof, by virtue of the conduct and
25 representations of Plaintiff and the justifiable reliance thereon by Defendants, are estopped to assert
26 claims set forth in the Complaint or assert that they have any right to relief against these answering
27 Defendants.
28

1 FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE

2 THESE ANSWERING DEFENDANTS ALLEGE:

3 These answering Defendants are informed and believe and thereon allege that the damages
4 alleged by Plaintiff, if any are found to exist, is speculative as a matter of law, and was unforeseeable
5 at the time the acts complained of occurred.

6 FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE

7 THESE ANSWERING DEFENDANTS ALLEGE:

8 These answering Defendants are informed and believe and thereon allege that with respect to
9 each claim, if Plaintiff has sustained any damages as alleged in the Complaint, which Defendants
10 deny, then Defendants allege that they are entitled to an offset.

11 FOR A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

12 THESE ANSWERING DEFENDANTS ALLEGE:

13 These answering Defendants are informed and believe and thereon allege that Plaintiff's
14 claims are barred because Plaintiff's claims are barred or reduced by Plaintiff's ratification of
15 Defendants' alleged conduct.

16 FOR A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

17 THESE ANSWERING DEFENDANTS ALLEGE:

18 These answering Defendants are informed and believe and thereon allege that the injuries and
19 damages, if any, of which Plaintiff complains, were proximately caused or contributed by the acts of
20 others, persons, and/or entities, and that said acts were an intervening and superseding cause of
21 injuries and/or damages, if any, of which Plaintiff complains. Thus, the liability of the Defendants, if
22 any, and the responsible third-parties should be apportioned according to their respective degrees of
23 fault or other legal responsibility, and the liability, if any, of these answering Defendants should be
24 reduced accordingly.

25 FOR A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

26 THESE ANSWERING DEFENDANTS ALLEGE:

27 These answering Defendants are informed and believe and thereon allege that Plaintiff has
28 failed to join necessary parties in this action in whose absence complete relief cannot be afforded.

1 FOR A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

2 THESE ANSWERING DEFENDANTS ALLEGE:

3 These answering Defendants are informed and believe and thereon allege that if there
4 presently exists or ever existed, any or all of the alleged rights, claims, or obligations which Plaintiff
5 seeks by way of the Complaint, each and every cause of action in the Complaint is barred by the
6 Statute of Frauds.

7 FOR A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

8 THESE ANSWERING DEFENDANTS ALLEGE:

9 These answering Defendants are informed and believe and thereon allege that Plaintiff is not
10 entitled to any recovery, since Plaintiff consented to any and all acts or omissions on the part of said
11 answering Defendants, if in fact any there were.

12 FOR AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

13 THESE ANSWERING DEFENDANTS ALLEGE:

14 These answering Defendants are informed and believe and thereon allege that if there
15 presently exists or ever existed, any or all of the alleged rights, claims or obligations which Plaintiff
16 complains of in the Complaint, said claims or obligations are unenforceable because Plaintiff
17 assumed the risk involved in the transaction.

18 FOR A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

19 THESE ANSWERING DEFENDANTS ALLEGE:

20 These answering Defendants are informed and believe and thereon allege that Defendant
21 acted reasonably and in good faith at all times material herein, based on all relevant facts, law, and
22 circumstances known by them at the time that they acted. Accordingly, Plaintiff is barred, in whole
23 or in part, from any recovery in this action.

24 FOR A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE

25 THESE ANSWERING DEFENDANTS ALLEGE:

26 These answering Defendants are informed and believe and thereon allege that Plaintiff and
27 each and every purported cause of action in Plaintiff's Complaint are barred because Plaintiff has
28 engaged in acts and courses of conduct which rendered Plaintiff in pari delicto.

1 FOR A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE

2 THESE ANSWERING DEFENDANTS ALLEGE:

3 These answering Defendants are informed and believe and thereon allege that the damages
4 alleged by Plaintiff, if any are found to exist, is speculative as a matter of law, and was unforeseeable
5 at the time the acts complained of occurred.

6 FOR A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE

7 THESE ANSWERING DEFENDANTS ALLEGE:

8 These answering Defendants are informed and believe and thereon allege that the Complaint
9 and each claim therein is uncertain, ambiguous, and unintelligible.

10 FOR A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE

11 THESE ANSWERING DEFENDANTS ALLEGE:

12 These answering Defendants are informed and believe and thereon allege that Plaintiff's
13 claims are barred under the doctrine of primary jurisdiction.

14 FOR A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE

15 THESE ANSWERING DEFENDANTS ALLEGE:

16 These answering Defendants are informed and believe and thereon allege that Plaintiff's
17 claims are barred due to a lack of standing.

18 FOR A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE

19 THESE ANSWERING DEFENDANTS ALLEGE:

20 These answering Defendants are informed and believe and thereon allege that Defendants'
21 business actions or practices were not unfair, unlawful, fraudulent, or deceptive within the
22 meaning of CA Buss. & Prof. Code § 17200, et seq.

23 FOR A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE

24 THESE ANSWERING DEFENDANTS ALLEGE:

25 These answering Defendants are informed and believe and thereon allege that Plaintiff's
26 Complaint, and each purported cause of action alleged therein, is not appropriate for class
27 certification because Plaintiff is not able to fairly and adequately protect the interests of all
28 members of the putative class.

1 FOR A TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE

2 THESE ANSWERING DEFENDANTS ALLEGE:

3 These answering Defendants are informed and believe and thereon allege that Plaintiff's
4 Complaint, and each purported cause of action alleged therein, is not appropriate for class
5 certification because the class as a whole, and/or any subclasses within the putative class as a
6 whole, are not sufficiently numerous.

7 FOR A TWENTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE

8 THESE ANSWERING DEFENDANTS ALLEGE:

9 These answering Defendants are informed and believe and thereon allege that Plaintiff's
10 Complaint, and each purported cause of action alleged therein, is not appropriate for class
11 certification because the claims of Plaintiff are not typical of the claims of the putative class
12 members, and Plaintiff is not an adequate representative of the putative class members.

13 FOR A TWENTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE

14 THESE ANSWERING DEFENDANTS ALLEGE:

15 These answering Defendants are informed and believe and thereon allege that this case is not
16 appropriate for class certification because, with respect to the types of claims alleged by Plaintiff
17 and the putative class members, individual questions predominate.

18 FOR A THIRTIETH, SEPARATE AND AFFIRMATIVE DEFENSE

19 THESE ANSWERING DEFENDANTS ALLEGE:

20 These answering Defendants are informed and believe and thereon allege that the Plaintiff's
21 Complaint and each cause of action set forth therein cannot be maintained because, without admitting
22 that any violation took place, Defendant alleges that any violation of the California Labor Code or of
23 a Wage Order of the Industrial Welfare Commission was an act or omission made in good faith, and
24 that any participation in such acts, Defendants had reasonable grounds for believing that the act or
25 omission was not a violation of the California Labor Code or any Wage Order of the Industrial
26 Welfare Commission.

27 FOR A THIRTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE

28 THESE ANSWERING DEFENDANTS ALLEGE:

 These answering Defendants are informed and believe and thereon allege that assuming
arguendo that Plaintiff is entitled to additional compensation, Defendants have not willfully or

1 intentionally failed to pay any such additional compensation to Plaintiff in order to justify any awards
2 of penalties, fees, or punitive damages.

3 FOR A THIRTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE

4 THESE ANSWERING DEFENDANTS ALLEGE:

5 These answering Defendants are informed and believe and thereon allege that each purported
6 claim contained in the Complaint, is barred in whole or in part because all decisions with respect to
7 Plaintiff's employment, if any, were made by Defendants for legitimate, non-discriminatory, and
8 non-pretextual reasons.

9 FOR A THIRTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE

10 THESE ANSWERING DEFENDANTS ALLEGE:

11 These answering Defendants are informed and believe and thereon allege that Plaintiff's
12 alleged claims in the Complaint are barred, in whole or in part, because Plaintiff did not exhaust the
13 administrative remedies as required and/or otherwise failed to comply with all the statutory
14 prerequisites to bring suit.

15 FOR A THIRTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE

16 THESE ANSWERING DEFENDANTS ALLEGE:

17 These answering Defendants are informed and believe and thereon allege that Plaintiff's
18 claim for unfair competition under Business and Professions Code § 17200, et seq. fails to state
19 sufficient facts to constitute a cause or causes of action, and/or has a defect in joinder, because
20 Plaintiff does not have standing in his individual or representative capacity under Business and
21 Professions Code § 17204, and Plaintiff is not authorized to bring a representative claim against
22 Defendants under Business and Professions Code § 17203.

23 FOR A THIRTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE

24 THESE ANSWERING DEFENDANTS ALLEGE:

25 These answering Defendants are informed and believe and thereon allege that the Plaintiff's
26 Complaint and each cause of action set forth therein cannot be maintained because Plaintiff's PAGA
27 claim is barred to the extent private actions seeking PAGA penalties manifest an unlawful delegation
28 of executive authority.

1 FOR A THIRTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE

2 THESE ANSWERING DEFENDANTS ALLEGE:

3 These answering Defendants are informed and believe and thereon allege that the Plaintiff's
4 PAGA claim is barred by law to the extent that it seeks to recover PAGA penalties on behalf of
5 individuals who are not aggrieved employees.

6 FOR A THIRTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE

7 THESE ANSWERING DEFENDANTS ALLEGE:

8 These answering Defendants are informed and believe and thereon allege that the Plaintiff's
9 PAGA claim is barred to the extent Plaintiff and the purported aggrieved employees seek penalties
10 beyond the alleged "initial" violation described in California Labor Code section 2699 and/or any
11 other applicable California Labor Code provision.

12 FOR A THIRTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE

13 THESE ANSWERING DEFENDANTS ALLEGE:

14 These answering Defendants are informed and believe and thereon allege that Plaintiff's
15 claims in the complaint are barred because Defendants reimbursed its employees for the costs of
16 expenses incurred in the discharge of their duties, if any, and/or did not otherwise require them to
17 bear such costs.

18 FOR A THIRTY-NINETH, SEPARATE AND AFFIRMATIVE DEFENSE

19 THESE ANSWERING DEFENDANTS ALLEGE:

20 These answering Defendants presently have insufficient knowledge and information on which
21 to form a belief as to whether they have additional, as yet unstated, affirmative defenses and, as such,
22 these answering Defendants reserve their right to assert additional affirmative defenses in the event
23 discovery indicates such defenses would be appropriate.

24 PRAYER FOR RELIEF

25 WHEREFORE, these answering Defendants R AND T OIL INCORPORATED, RAFI
26 BARTANIYAN, and THOMAS VARTANIAN pray for judgment against Plaintiff as follows:

- 27 1. That Plaintiff takes nothing by Plaintiff's Complaint herein;
28 2. That the Court denies Plaintiff's request for class certification;
 3. That the Complaint be dismissed with prejudice and that judgment be entered against
 Plaintiff and in favor of Defendant on each cause of action;

DATED: July 25, 2024

BRIGGS & ALEXANDER, APC

/s/ Garabet O. Khajadourian
Garabet O. Khajadourian
Attorneys for Defendants R AND T OIL
INCORPORATED, RAFI BARTANIYAN, AND
THOMAS VARTANIAN

PROOF OF SERVICE

I, GARABET O. KHAJADOURIAN, declare:

I am employed in the County of Orange, State of California and am over the age of 18 and not a party to the within action. My business address is 4300 Campus Drive, Suite 210, Newport Beach, CA 92660. On **July 25, 2024**, I served the document described as: **DEFENDANTS R AND T OIL INCORPORATED, RAFI BARTANIYAN, AND THOMAS VARTANIAN'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** on the interested parties in this action as follows:

☒ By placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Plaintiff's Legal Counsel

David Glenn Spivak, Esq.

Caroline Tahmassian, Esq.

THE SPIVAK LAW FIRM

8605 Santa Monica Blvd., PMB 42554

West Hollywood, CA 90069

Tel. 213-725-9094

Fax. 213-634-2485

E-mail: david@spivaklaw.com

E-mail: caroline@spivaklaw.com

- ☐ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Briggs and Alexander, 4300 Campus Drive, Suite 210, Newport Beach, CA 92660.
- ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ FEDEX ☐ UPS ☐ NORCO Overnight Express authorized to receive documents at Briggs and Alexander, APC, 4300 Campus Drive, Suite 210, Newport Beach, CA 92660, with delivery fees fully provided for.
- ☒ **BY E-SERVICE:** Pursuant to California Rule of Court 2.251, I hereby certify that the above document(s) was uploaded to the ONE LEGAL web site and will be posted on the website by the close of the next business day and the webmaster will give e-mail notification to all parties of the e-service.
- ☐ **BY E-MAIL:** I sent the document described above to the list of e-mail address as indicated on the attached Service List.
- ☐ **BY PERSONAL SERVICE:** I placed the aforementioned document(s) in a sealed envelope and I delivered such envelope by hand to the offices of address.

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

Executed on **July 25, 2024**, at Newport Beach, California.

/s/ Garabet O. Khajadourian
GARABET O. KHAJADOURIAN

EXHIBIT 6



Raosoft Calculator

Population Size ⓘ

55

Margin of Error (%) ⓘ

25

Confidence Level ⓘ

85%

Response Distribution (%) ⓘ

50

RECOMMENDED SAMPLE SIZE

8 respondents needed

CONFIDENCE

85%

MARGIN OF ERROR

±25%

RESPONSE DIST.

50%

POPULATION

55

Do you need to find out how many respondents you need for your thesis? Are you stuck on **Chapter 3** of your research paper? You are not alone. Thousands of students and researchers face this problem every day.



The [Raosoft calculator](#) is one of the most trusted tools for this job. It helps you find the right sample size for any survey or study. It is free, fast, and easy to use. Best of all, it gives you results that your thesis adviser will accept.

In this guide, you will learn exactly what the **Raosoft sample size calculator** is. You will also learn how to use it step by step. We will cover the formula behind it, how to use it for your thesis in the Philippines, how to cite it in **APA format**, and how it compares to the **Slovin formula**.

By the end of this article, you will know how to use this tool with full confidence.

Table of Contents

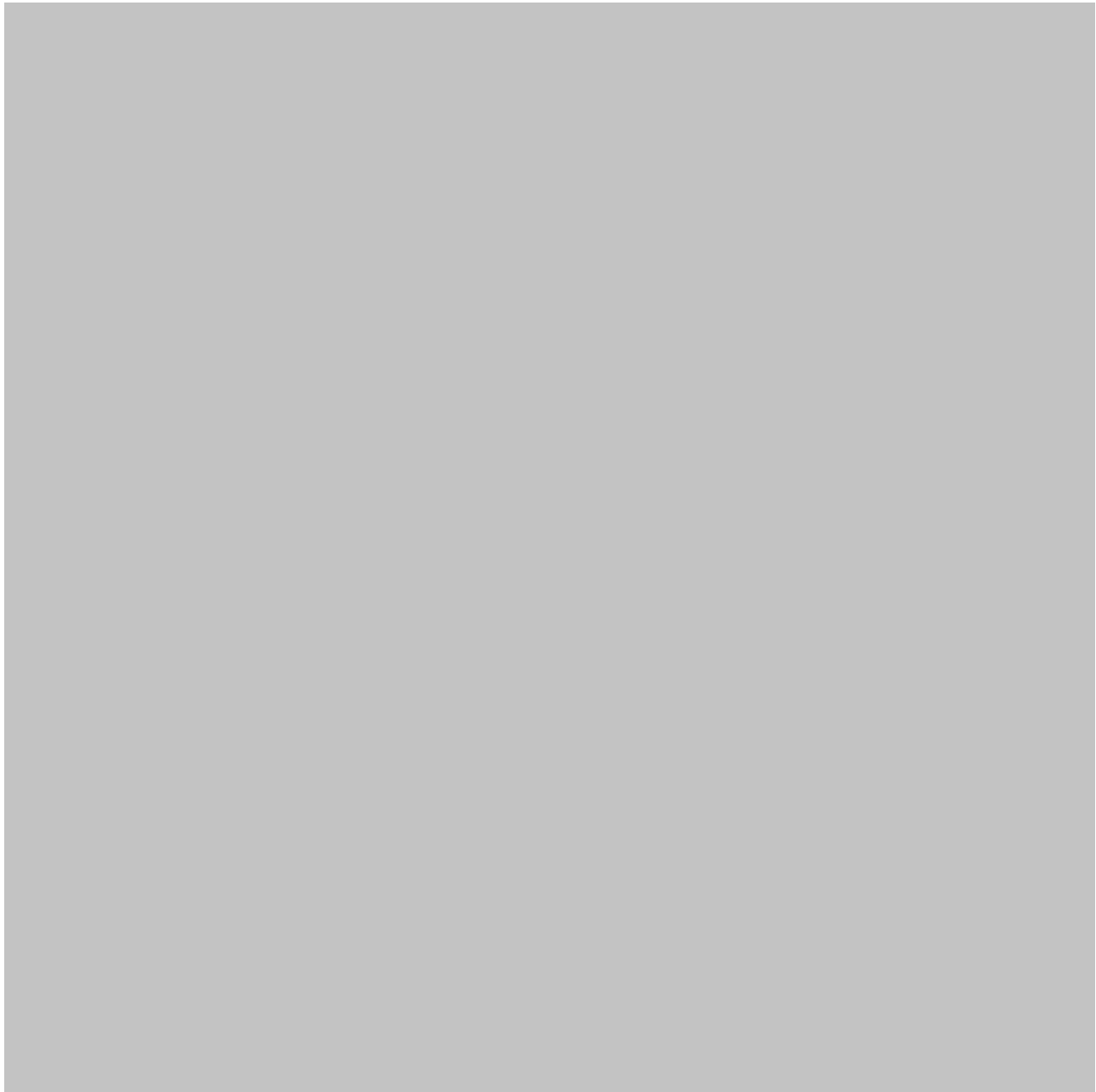
- [What Is the Raosoft Calculator?](#)
- [The 4 Key Input Variables of the Raosoft Calculator](#)
- [How to Use the Raosoft sample size calculator Step by Step](#)
 - [Step 1: Go to the Raosoft Website](#)
 - [Step 2: Enter Your Population Size](#)
 - [Step 3: Set Your Margin of Error](#)
 - [Step 4: Choose Your Confidence Level](#)
 - [Step 5: Set Your Response Distribution](#)
 - [Step 6: Click "Calculate" and Read the Result](#)
 - [Pro Tip: Add 10-15% for Non-Response](#)
 - [Common Mistakes When Using the Raosoft Calculator](#)
- [The Formula Behind the Raosoft Calculator \(Cochran Formula Explained\)](#)
 - [The Cochran Formula](#)
 - [Manual Calculation Example](#)
- [Raosoft Calculator for Thesis in the Philippines \(Chapter 3 Methodology Guide\)](#)
 - [What Values Are Accepted by Philippine University Reviewers?](#)
 - [Pre-Calculated Sample Size Reference Table](#)
 - [How to Write About Sample Size in Chapter 3](#)
- [How to Cite the Raosoft Calculator in APA Format](#)
 - [APA 7th Edition Reference List Entry](#)



- [In-Text Citation \(APA 7\)](#)
- [Important Notes on Citation](#)
- [Raosoft Calculator vs Slovin Formula: Which Should You Use?](#)
 - [What Is the Slovin Formula?](#)
 - [Side-by-Side Comparison](#)
 - [Which One Should You Use?](#)
- [Raosoft Calculator Not Working? Try These Free Alternatives](#)
 - [Why Does Raosoft Sometimes Not Work?](#)
 - [Free Alternatives to the Raosoft Calculator](#)
 - [Can I Use These Alternatives in My Thesis?](#)
- [Practical Worked Examples Using the Raosoft Calculator](#)
 - [Example 1: High School Thesis on Student Study Habits](#)
 - [Example 2: Graduate Research on Employee Satisfaction](#)
 - [Example 3: Market Research Survey for a Small Business](#)
- [Conclusion](#)

What Is the Raosoft Calculator?





The **Raosoft calculator** is a free online tool made by Raosoft, Inc. It helps researchers find the correct **sample size** for a survey or study. You can find it at the official website:<https://raosoftcalculator.net/>

Raosoft, Inc. is a company that builds survey and data collection software. They created this tool to help researchers at all levels. From undergraduate students to professional academics, anyone can use it.

When you do research, you cannot always study every single person in a group. For example, if you want to study 10,000 college students, you cannot talk to all of them.



So you study a smaller group instead. That smaller group is called your **sample**. The number of people in your sample is called your **sample size**.

Getting the right sample size is very important. If your sample is too small, your results may not be accurate. If your sample is too large, you waste time and money. The Raosoft sample size calculator finds the best number for you.

Researchers around the world use this tool in their work. In the Philippines alone, hundreds of thesis papers cite the Raosoft calculator every year. It is commonly used in universities like UP, UST, DLSU, and Ateneo de Manila.

The 4 Key Input Variables of the Raosoft Calculator

To use the **Raosoft calculator correctly**, you need to understand its four inputs. Each one affects your final sample size.

1. Population Size (N) This is the total number of people in the group you are studying. For example, if you are studying all employees in a company with 500 workers, your population size is 500. If you do not know the exact number, you can leave this blank and Raosoft will assume a very large population.

2. Margin of Error (e) The margin of error tells you how much your results can differ from the true population value. A 5% margin of error is the most common choice for social science research. It means your results are accurate within plus or minus 5 percent. For medical or clinical research, a 3% margin of error is often required.

3. Confidence Level (Z) The confidence level tells you how sure you are that your sample results reflect the real population. A 95% confidence level is the gold standard in most research. It means you are 95% certain that your results are accurate. The 95% confidence level uses a Z-score of 1.96 in the formula. A 99% confidence level gives more certainty but needs a bigger sample.



4. Response Distribution (p) This is the expected percentage of your population that will give a particular answer. If you are not sure, use 50%. This gives the largest possible sample size and keeps your research safe.

Input Variable	Recommended Value	What It Means
Population Size (N)	Actual total count	The full group you are studying
Margin of Error (e)	5%	Acceptable error range in your results
Confidence Level (Z)	95%	How certain you are in your results
Response Distribution (p)	50%	Expected proportion giving a specific answer

How to Use the Raosoft sample size calculator

Step by Step

Using the **Raosoft sample size calculator** is simple. Follow these steps and you will have your answer in under one minute.

Step 1: Go to the Raosoft Website

Open your browser and go to raosoftcalculator.net. You will see a simple form with four input fields. No sign-up is needed. No payment is required.

Step 2: Enter Your Population Size

Type in the total number of people in your study group. For example, if you are studying 800 students in your school, type **800** in the population size field.



If your population is very large (like all adults in a country), just leave the default number or type a very high number like 1,000,000.

Step 3: Set Your Margin of Error

The default is 5%. For most thesis research and social science studies, keep it at 5%. If you are doing health or medical research, change it to 3%.

For Philippine university theses, most advisers and panelists accept a 5% margin of error at 95% confidence level.

Step 4: Choose Your Confidence Level

The default is 95%. This is what most researchers use. Leave it at 95% unless your research requires a higher level of certainty.

Some studies use 90% to get a smaller sample size. But for thesis research in the Philippines, 95% is the standard and is widely accepted by reviewers.

Step 5: Set Your Response Distribution

Keep this at 50% if you are not sure about your population's response pattern. This is the safe default. It gives you the largest sample size, which protects your research accuracy.

Step 6: Click “Calculate” and Read the Result

After you fill in all four fields, click the calculate button. The tool will show you the **minimum recommended sample size**. This is the number of respondents you need to collect data from.

Worked Example:

- Population Size: 800
- Margin of Error: 5%



- Confidence Level: 95%
- Response Distribution: 50%
- **Result: 260 respondents**

This means if you are studying a group of 800 people, you need at least 260 respondents to get statistically valid results.

Pro Tip: Add 10–15% for Non-Response

In real research, not everyone you approach will agree to answer your survey. Some questionnaires are left blank or returned incomplete. To cover this, add 10 to 15 percent extra to your sample size.

For the example above: $260 + 15\% = \mathbf{299 \text{ respondents}}$. Round it up to 300 to be safe.

Common Mistakes When Using the Raosoft Calculator

Many students and researchers make small errors when using Raosoft. These mistakes can weaken your methodology section. Here are the most common ones and how to avoid them.

Mistake 1: Entering the wrong population size Some students type the number of people in their school, city, or country instead of the actual study group. Your population size should match your research scope exactly. If you are studying only Grade 11 students in your school, your population is the total number of Grade 11 students — not the whole school.

Mistake 2: Using a confidence level that does not match the research type A 95% confidence level is standard for social science and educational research. But some students use 90% just to get a smaller sample. This is not always wrong, but you must justify it in your methodology. Most thesis panelists in the Philippines expect 95%.



Mistake 3: Forgetting the non-response buffer Raosoft gives you the minimum number of respondents needed. But in real surveys, some people do not respond. If you collect exactly the minimum number, you may fall short. Always add 10% to 15% extra to your target.

Mistake 4: Changing inputs after data collection starts Some students compute the sample size using one set of values, then change the inputs after getting results they do not like. This is a serious research error. Your sample size must be fixed before you begin data collection. Document your **Raosoft** settings in Chapter 3.

Mistake 5: Not citing the tool in the references Many students use Raosoft but forget to include it in their reference list. This can be flagged during the panel review. Always add the APA citation covered in Section 5 of this article.

The Formula Behind the Raosoft Calculator (Cochran Formula Explained)





The **Raosoft sample size calculator** uses the **Cochran formula**. This formula was developed by statistician W.G. Cochran in 1977. It is one of the most widely accepted methods for sample size calculation in quantitative research.

The Cochran Formula

The basic formula has two steps:

Step 1 — Initial Sample Size (n_0):

$$n_0 = (Z^2 \times p \times (1 - p)) / e^2$$



Step 2 — Finite Population Correction (n):

$$n = n_0 / (1 + (n_0 - 1) / N)$$

Where:

- **Z** = Z-score for your confidence level (1.96 for 95%)
- **p** = estimated response proportion (0.5 for maximum variability)
- **e** = margin of error in decimal form (0.05 for 5%)
- **N** = total population size

Manual Calculation Example

Let us use the same example: Population = 800, Confidence = 95%, Margin of Error = 5%, Response Distribution = 50%.

Step 1: $n_0 = (1.96^2 \times 0.5 \times 0.5) / 0.05^2$ $n_0 = (3.8416 \times 0.25) / 0.0025$ $n_0 = 0.9604 / 0.0025$ $n_0 = 384.16 \approx 385$

Step 2 (Finite Population Correction): $n = 385 / (1 + (385 - 1) / 800)$ $n = 385 / (1 + 0.48)$ $n = 385 / 1.48$ $n \approx 260$ **respondents**

This matches exactly what Raosoft gives you. The finite population correction (FPC) is what makes Raosoft's result smaller than the raw formula. For small populations, this correction makes a big difference. For very large populations, the FPC has almost no effect.

Understanding this formula helps you explain your methodology to your thesis adviser with confidence.

Raosoft Calculator for Thesis in the Philippines (Chapter 3 Methodology Guide)



In the Philippines, the Raosoft sample size calculator is one of the most commonly used tools for thesis research. Students from undergraduate programs to graduate studies rely on it for **Chapter 3** of their research papers.

Here is why Filipino students use it so often:

- It is **free and online** — no need to install software
- It uses the **Cochran formula**, which is accepted by most Philippine universities
- It gives a **clear, defensible number** that panelists and advisers accept
- It is **easy to explain** in your methodology section

What Values Are Accepted by Philippine University Reviewers?

Most thesis reviewers and panelists in UP, UST, DLSU, Ateneo, and other Philippine universities accept the following standard values:

Setting	Accepted Value
Margin of Error	±5%
Confidence Level	95%
Response Distribution	50% (if unknown)
Non-Response Buffer	+10% to +15%

Pre-Calculated Sample Size Reference Table

Use this table if you already know your **population size**. All values use 95% confidence level and ±5% margin of error — the standard for **Philippine social science research**.

Population Size (N)	Minimum Sample Size (n)	
---------------------	-------------------------	---

50	44
100	80
200	132
300	169
400	196
500	217
700	248
800	260
1,000	278
1,500	306
2,000	322
3,000	341
5,000	357
10,000	370
100,000+	384

How to Write About Sample Size in Chapter 3

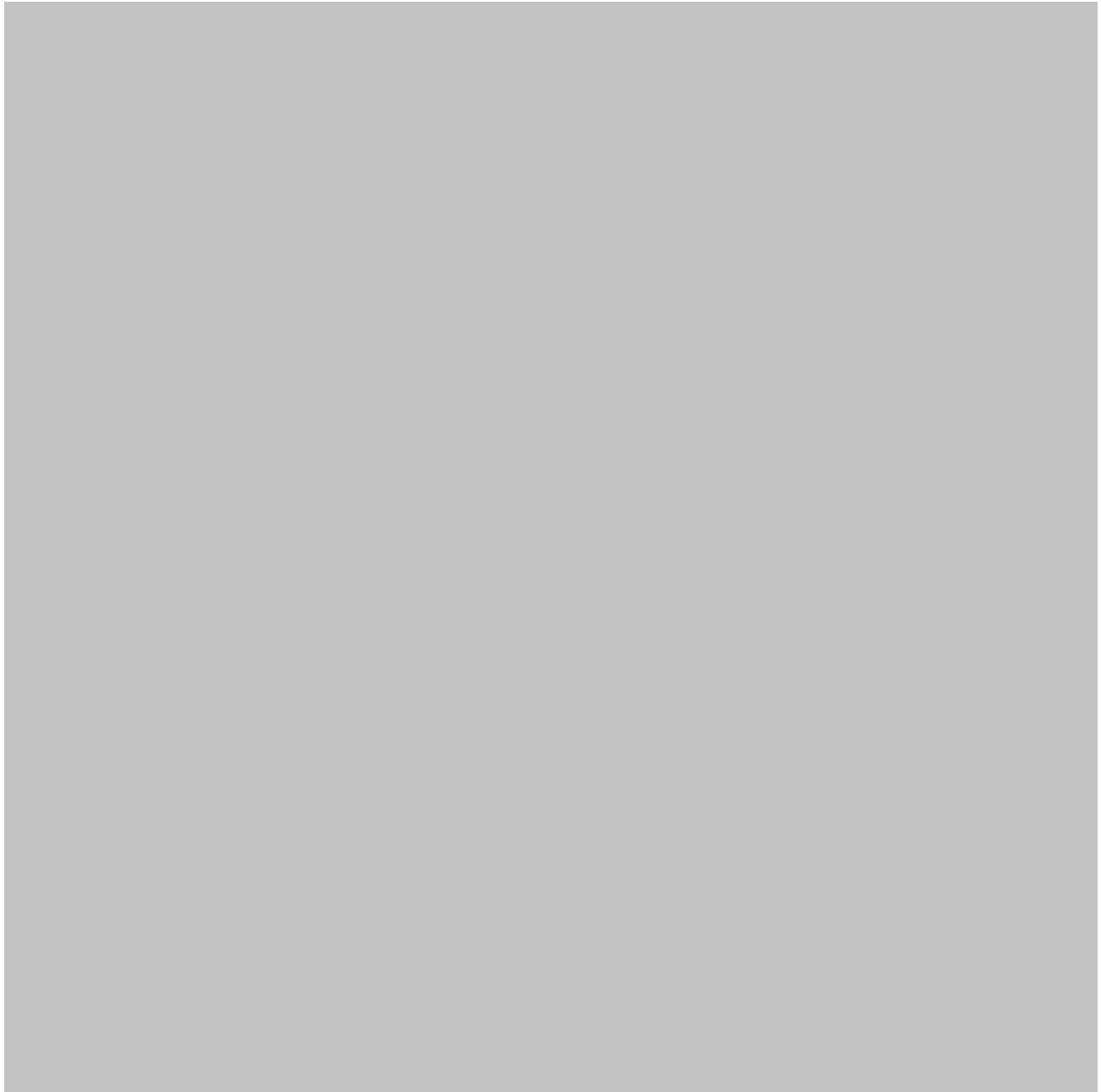
Many Filipino students are unsure how to write about their sample size in their thesis. Here is a ready-to-use paragraph you can adapt for your own **Chapter 3**:

“The sample size of this study was determined using the Raosoft Sample Size Calculator (Raosoft, Inc., 2004), an online tool that applies the Cochran (1977) formula with finite population correction. Using a 95% confidence level, a 5% margin of error, and a 50% response distribution, the calculated minimum sample size was



[n] respondents from a total population of [N]. An additional 15% was added to account for non-response, bringing the final target sample to [adjusted n] respondents.”

How to Cite the Raosoft Calculator in APA Format



One of the most searched questions among Filipino students is how to properly cite the Raosoft calculator in their thesis or research paper. Here is the correct format.



APA 7th Edition Reference List Entry

Raosoft, Inc. (2004). *Sample size calculator* [Online calculator]. Retrieved from <http://www.raosoft.com/samplesize.html>

In-Text Citation (APA 7)

(Raosoft, Inc., 2004)

Example in a sentence:

“The sample size was calculated using an online tool (**Raosoft, Inc., 2004**) at a 95% confidence level and a 5% margin of error.”

Important Notes on Citation

- Use **2004** as the year. This is the original publication year of the Raosoft calculator.
- Some researchers use the year they accessed the site (e.g., 2026). Either is acceptable, but 2004 is most commonly used in published research.
- Always check with your thesis adviser or institution’s citation guide to confirm the preferred format.
- If your school uses APA 6th edition, the format is nearly identical — just check the italics placement for the tool title.

Raosoft Calculator vs Slovin Formula: Which Should You Use?

Both the Raosoft calculator and the **Slovin formula** are popular tools for computing sample size. In the Philippines especially, many students wonder which one to use. Here is a clear comparison.

What Is the Slovin Formula?



The **Slovin formula** was introduced by Yamane (1967) and is often credited to Slovin. It is a simpler formula used to find **sample size** from a finite population.

Slovin Formula:

$$n = N / (1 + N \times e^2)$$

Where:

- **n** = sample size
- **N** = population size
- **e** = margin of error (in decimal)

Example using N = 800, e = 0.05: $n = 800 / (1 + 800 \times 0.05^2)$ $n = 800 / (1 + 800 \times 0.0025)$ $n = 800 / (1 + 2)$ $n = 800 / 3$ **n ≈ 267 respondents**

Side-by-Side Comparison

Feature	Raosoft (Cochran Formula)	Slovin Formula
Formula Basis	Cochran (1977) — statistically robust	Yamane (1967) — simplified
Inputs Required	Population, confidence, margin of error, response distribution	Population, margin of error only
Confidence Level Control	Yes — you can set 90%, 95%, 99%	No — fixed assumption
Best For	Quantitative survey research	Quick estimates only
Accepted in PH Thesis?	Yes — widely accepted	Yes — but sometimes questioned



Result for N=800, e=5%	260 respondents	267 respondents
Statistical Accuracy	Higher — uses Z-score and FPC	Lower — simplified approximation

Which One Should You Use?

Use Raosoft (Cochran formula) when:

- You are doing formal quantitative research
- Your thesis requires a clearly defensible methodology
- Your panel or adviser requires statistical justification
- You want to show the confidence level in your methodology

Use the Slovin formula when:

- You need a quick estimate only
- Your population size is between 100 and 5,000
- Your research context does not require strict statistical precision

Bottom line for Philippine thesis students: The Raosoft calculator gives you a stronger methodological foundation. It is harder to question because it shows your confidence level, margin of error, and response distribution clearly. When in doubt, use Raosoft. Panelists tend to be more satisfied with a Cochran-based sample size calculation than a Slovin-based one.

Raosoft Calculator Not Working? Try These Free Alternatives

The **Raosoft website** has been online since 2004. It is a simple HTML page that sometimes has loading issues. If you visit **raosoft.com** and it is not working or loading slowly, you have options.



Why Does Raosoft Sometimes Not Work?

The Raosoft website is hosted on an older server. It sometimes goes down due to high traffic, server maintenance, or browser compatibility issues. Some users also experience problems on mobile devices or newer browsers.

Free Alternatives to the Raosoft Calculator

If raosoft website is down or not responding, here are the best free alternatives you can use. All of them use the same Cochran formula and give the same results.

1. raosoftcalculator.net Sample Size Calculator Available at raosoftcalculator.net. It gives the same result as Raosoft. You can adjust confidence level, margin of error, and population size freely.

2. SurveyMonkey Sample Size Calculator SurveyMonkey offers a free sample size calculator on their website. It is mobile-friendly and easy to use. Results are based on the same Cochran formula.

3. Creative Research Systems Calculator This is another trusted online calculator. It has been used in published academic research. It allows full control over all input variables.

4. Our Built-In Calculator (This Page) We have embedded a free Raosoft-style calculator on this page. It works exactly like the original tool. It uses the same Cochran formula with finite population correction. You can use it without going to raosoft.com at all.

Can I Use These Alternatives in My Thesis?

Yes. As long as the tool uses the Cochran formula at your stated confidence level and margin of error, the result is valid. In your Chapter 3, you just need to state:

“Sample size was computed using the Cochran (1977) formula at a 95% confidence level and a 5% margin of error.”



You do not need to cite a specific website if you computed the formula manually or used an equivalent tool.

Practical Worked Examples Using the Raosoft Calculator

Sometimes the best way to learn a tool is to see it in action. Here are three real-world examples using the Raosoft calculator. Each one covers a different research scenario you might face.

Example 1: High School Thesis on Student Study Habits

Scenario: A **Grade 12** student is studying the study habits of senior high school students. The school has 650 Grade 12 students.

- Population Size: 650
- Margin of Error: 5%
- Confidence Level: 95%
- Response Distribution: 50%
- **Raosoft Result: 242 respondents**
- With 15% buffer: **278 respondents**
-

Example 2: Graduate Research on Employee Satisfaction

Scenario: A graduate student is studying job satisfaction among nursing staff. The hospital has 1,200 nurses.

- Population Size: 1,200
- Margin of Error: 5%
- Confidence Level: 95%
- Response Distribution: 50%
- **Raosoft Result: 291 respondents**



- With 10% buffer: **320 respondents**

Notice how the sample size does not grow as fast as the population. When N increases from 650 to 1,200 (almost doubled), the sample only grows from 242 to 291. This is the power of the finite population correction at work.

Example 3: Market Research Survey for a Small Business

Scenario: A business owner wants to survey customers about service quality. They have a customer database of 300 people.

- Population Size: 300
- Margin of Error: 5%
- Confidence Level: 95%
- Response Distribution: 50%
- **Raosoft Result: 169 respondents**
- With 10% buffer: **186 respondents**

For small populations like this, the **Raosoft calculator** is especially useful. The finite population correction reduces the required sample significantly. Without it, the raw Cochran formula would suggest 384 respondents — more than the total population. Raosoft handles this automatically.

What is the Raosoft Calculator Used For?

The Raosoft calculator is used to **determine the ideal sample size** for surveys and research studies. You enter your population size, margin of error, confidence level, and response distribution — and it instantly tells you how many responses you need for statistically valid results.

What is Cochran's Formula Used For?



What is the Sample Size for 10,000 Population?

What's the Difference Between Raosoft and Other Calculators?

Is the Raosoft calculator free to use?

What confidence level should I use for my thesis?

What is a good margin of error for a thesis?

Raosoft vs Slovin formula — which is accepted in Philippine universities?

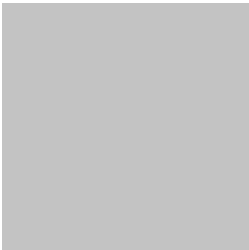
Conclusion

The **Raosoft calculator** is one of the best free tools for computing sample size in research and thesis work. It uses the trusted Cochran formula with finite population correction. It gives you a statistically valid sample size in seconds.

Whether you are writing **Chapter 3** of your undergraduate thesis or planning a large-scale quantitative survey, **Raosoft** makes the process clear and simple. You just need to enter four values: your population size, margin of error, confidence level, and response distribution. The tool does the rest.

For Filipino students and researchers, Raosoft is especially valuable. It gives you a result that advisers and thesis panelists accept without question. Use the Chapter 3 sample paragraph in this guide. Use the APA citation format provided. And use the pre-calculated reference table to save time.





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EXHIBIT 7

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Case title: Arlene Apodaca v. R And T Oil Incorporated
Case no.: CVRI2402196
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **Data**

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Sunday, April 19, 2020
Lab.Code § 203 (waiting time penalties) period begins:	Monday, April 19, 2021
Lab.Code § 2699 (civil penalties) period begins:	Wednesday, April 19, 2023
Lab.Code § 226 (pay stub penalties) period begins:	Wednesday, April 19, 2023
LWDA Notice:	Friday, April 19, 2024
Lawsuit:	Friday, April 19, 2024
Mediation:	Wednesday, March 5, 2025
Anticipated Settlement Period end date:	Thursday, July 3, 2025

Classes / Groups sizes

UCL Class Members:		55
UCL Workweeks:		1,272
UCL Wage Statements:		1,272
UCL Workdays:	* Assuming 5 shifts/employee/workday/week	8,905
UCL Calendar days:		1,781
UCL Months:		292.78
Waiting Time Penalties Class Members:	* Defendants are reporting 9 current employees	46
PAGA Aggrieved Employees:	* No data provided by Defendants and this is an assumption	25
PAGA Wage Statements:	* Assuming 9 employees/paycheck/week	936
Wage Statement Class Members:	* No data provided by Defendants and this is an assumption	25
Wage Statement Class Wage Statements:	* Assuming 9 employee/paycheck/week	936

Averages

Average Hourly Rate:	\$	15.68
Average Overtime Rate:	\$	23.52
Average Doubletime Rate:	\$	31.36
Average Work Hours Per Day:		8.25
Average Work Hours Per Week:		41.25
Average Workdays Per Week:	* gas station is open 24/7	7.00
Workdays to Calendar Days (%):		100.00%
Paycycle:	weekly (52 paychecks/year)	
Paychecks Per Year:		52

Confidential Settlement Communication

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Case title: Arlene Apodaca v. R And T Oil Incorporated
Case no.: CVRI2402196
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **Unpaid overtime wages**
Authority: Lab.Code §§ 1194, 1194.2, and 1198

Average Overtime Rate:	\$	23.52
Unpaid hours per work day:		0.33
Unpaid hours per pay week:	* assuming each employee worked 5 days per week	1.65
Actionable workweeks:		1,272
Interest:		10%
Unpaid overtime wages:	\$	54,306.25

Confidential Settlement Communication

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Case title: Arlene Apodaca v. R And T Oil Incorporated
Case no.: CVRI2402196
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **Unprovided Meal Periods**
Authority: Lab.Code §§ 226.7, 512, and 1198

Average Hourly Rate:	\$	15.68
Actionable workdays:		8,905
>>Percentage qualifying for meal periods:		100.00%

*Defendants
admit each
employee works
alone and that
they never
provided the
employees with
meal periods

Violation rate (%)		100.00%
--------------------	--	---------

Meal period premium wages:	\$	139,630.40
----------------------------	----	------------

Confidential Settlement Communication

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Case title: Arlene Apodaca v. R And T Oil Incorporated
Case no.: CVRI2402196
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **Unprovided Rest Periods**
Authority: Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	\$	15.68
Actionable workdays:		8,905
>>Percentage qualifying for rest periods:		100.00%

* Defendants
admit each
employee works
alone and that
they never
provided the
employees with
rest breaks

Violation rate (%)		100.00%
--------------------	--	---------

Rest period premium wages:	\$	139,630.40
----------------------------	----	------------

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Case title: Arlene Apodaca v. R And T Oil Incorporated
Case no.: CVRI2402196
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **Unreimbursed expenses**
Authority: Lab.Code § 2802

Cellphone

UCL Workweeks:		1,272
Average weekly cellphone cost attributable to work:	\$	10.00
Interest rate:		10%
Unreimbursed cellphone costs:	\$	13,993.57

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Case title: Arlene Apodaca v. R And T Oil Incorporated
Case no.: CVRI2402196
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **Itemized Wage Statements**
Authority: Lab.Code § 226

Wage Statement Class Members:		25
Wage Statement Class Wage Statements:		936
Initial penalty:	\$	50.00
Subsequent penalty:	\$	100.00
Statutory wage statement penalties:	\$	92,350.00

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Case title: Arlene Apodaca v. R And T Oil Incorporated
Case no.: CVRI2402196
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **Waiting Time / Final Wages**
Authority: Lab.Code § 203

Waiting Time Penalties Class Members:		46
Days waiting:		30
Average Hourly Rate:	\$	15.68
Average Overtime Rate:	\$	23.52
Average Doubletime Rate:	\$	31.36
Average Work Hours Per Day:		8.25
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.25
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	181,221.60

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Case title: Arlene Apodaca v. R And T Oil Incorporated
Case no.: CVRI2402196
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Pay periods		Total
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	936	\$	93,600.00
Overtime wages/M meal periods (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	936	\$	46,800.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	936	\$	93,600.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	936	\$	93,600.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 2699	\$ 100.00	936	\$	93,600.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	936	\$	93,600.00
Total:				\$	514,800.00

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Case title: Arlene Apodaca v. R And T Oil Incorporated
Case no.: CVRI2402196
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **Totals**
Authority: Various

Restitution		Reduction	Demand
Unpaid overtime wages:	\$ 54,306.25	5% \$	51,590.94
Meal period premium wages:	\$ 139,630.40	5% \$	132,648.88
Rest period premium wages:	\$ 139,630.40	5% \$	132,648.88
Unreimbursed cellphone costs:	\$ 13,993.57	5% \$	13,293.89
Restitution subtotal:	\$ 347,560.62	\$	330,182.59
Penalties			
Statutory wage statement penalties:	\$ 92,350.00	5% \$	87,732.50
Waiting time penalties:	\$ 181,221.60	5% \$	172,160.52
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 93,600.00	5% \$	88,920.00
Overtime wages/M meal periods (Lab.Code § 510):civil penalties:	\$ 46,800.00	5% \$	44,460.00
Rest periods (Lab.Code § 1198):civil penalties:	\$ 93,600.00	5% \$	88,920.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 93,600.00	5% \$	88,920.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 93,600.00	5% \$	88,920.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 93,600.00	5% \$	88,920.00
Penalties subtotal:	\$ 788,371.60	\$	748,953.02
Grand total:	\$ 1,135,932.22	\$	1,079,135.61

17.61%

EXHIBIT 8

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5 Beverly Hills, CA 90212
6 Telephone (310) 499-4730
7 Facsimile (310) 499-4739
8 Email david@spivaklaw.com

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

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

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

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

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

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

22 **SECOND CLAIM FOR RELIEF**

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

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

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

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

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

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

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

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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

Respectfully submitted,

THE SPIVAK LAW FIRM



By:

Date: February 23, 2010

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

EXHIBIT 9

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

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

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

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

19 IT READS NOW, (READING:)

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

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

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

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 10

2013 WL 766535
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.
Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. [Charles F. Palmer](#), Judge. Reversed and remanded. (Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

Dickstein Shapiro, [Arthur Silbergeld](#), [Christine de Bretteville](#) for Defendants and Appellants.

Altshuler Berzon, [Michael Rubin](#), [Eileen B. Goldsmith](#); Law Offices of Joseph D. Tuchmayer, [Joseph D. Tuchmayer](#); Law Offices of Todd Arron, [Todd S. Arron](#) for Plaintiffs and Respondents.

Opinion

[BOREN](#), P.J.

***1** We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the “**prevailing** party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

FACTS²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a “residual bonus.” A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus. Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees \$0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from \$455 to \$35,719. The court awarded plaintiffs’ counsel attorney fees of \$881,715. The court rejected plaintiffs’ claim under PAGA for lack of standing, because plaintiffs left defendants’ employ before PAGA took effect in 2004.

*2 Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court’s award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court’s award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs “could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees.”

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court’s award of \$881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.³

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of \$307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants’ July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for \$2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs’ request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants’ view, the “catalyst” theory is inapposite because no public interest was vindicated by plaintiffs’ lawsuit.

THE TRIAL COURT’S RULING

*3 The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the prevailing parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings; these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of \$346,947.

DISCUSSION

1. Appeal and Review

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not prevail on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. Overview of § 218.5

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or employers, whichever is the prevailing party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. The Catalyst Theory

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.⁴ It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

*4 The doctrine " " "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." " " (*Graham, supra*, 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation.” (*Graham, supra*, 34 Cal.4th at pp. 560–561.)

“ ‘A plaintiff will be considered a “successful party” where an important right is vindicated “by activating defendants to modify their behavior.” ’ ” (*Graham, supra*, 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham*, the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, “implicated an issue of public safety, and [] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards.” (*Id.* at pp. 577–578.)

4. Plaintiffs’ Right to Recover Attorney Fees

Plaintiffs originally brought suit in 2004 “on behalf of themselves and the general public.” They requested attorney fees pursuant to § 218.5. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the prevailing party under § 218.5, we import the definition used in the Code of Civil Procedure (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a prevailing party as “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (*Code Civ. Proc.*, § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § 218.5, plaintiffs were not the prevailing party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § 218.5, plaintiffs argue that the theory should apply, based on defendants’ July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § 218.5, which mandates an award of attorney fees to the “prevailing party.” Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

*5 The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants’ 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts “not only to determine the lawsuit’s catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit.” (*Graham, supra*, 34 Cal.4th at p. 576.) Plaintiffs cannot be a “successful party” if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs’ lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra*, 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year’s end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the “catalyst” theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor’s constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a \$1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit “ ‘that genuinely provide[d] a public benefit.’ ” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. Defendants’ Right to Recover Attorney Fees

Section 218.5 is a reciprocal attorney fees statute that requires an award of fees to the “prevailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 218.5 when they filed suit. Defendants were the prevailing parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [prevailing party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not prevail on any claims.

*6 Plaintiffs contend that their claims for fees under § 218.5 were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the prevailing party under § 218.5. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § 218.5 lists only one remotely pertinent exception: “This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.”⁵ Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who prevail on their minimum wage or overtime compensation claims.

Section 218.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the employer to become the prevailing party in the litigation. Defendants are the prevailing party under § 218.5, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.⁶

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the prevailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 218.5 will be referred to in this opinion as § 218.5.

² The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

³ Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount plaintiffs are entitled to

reasonable fees for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- * Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

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EXHIBIT 11

2011 WL 5979937
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC–09–484879). | Nov. 30, 2011.

Attorneys and Law Firms

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Opinion

[NEEDHAM](#), J.

***1** Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to [Labor Code section 218.5](#), after the court granted respondent’s motion for summary judgment. Appellant contends: (1) [Labor Code section 218.5](#) did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under [Labor Code section 1194](#); (2) the court should have apportioned the attorney fees between appellant’s unpaid wages claim and her constructive termination claim, for which no attorney’s fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was “owed wages” and was “owed for accrued paid time off,” and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu’s “conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment.” In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and “reasonable attorney’s fees, pursuant to [Labor Code Section 218.5](#).” Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not prevail on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the prevailing party, was eligible to recover its reasonable attorney fees and costs.²

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the prevailing party and entitled to recover its fees and costs under Labor Code section 218.5. Café Tiramisu requested \$36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

*2 Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under Labor Code section 218.5, which authorizes recovery by the prevailing party, because her action was for overtime wages governed by Labor Code section 1194, which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of \$36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) Labor Code section 218.5 was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. Recovery of Attorney Fees Under Labor Code Section 218.5

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to Labor Code section 218.5.³ Section 218.5 provides in pertinent part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of section 218.5 was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to Labor Code [sections] 226.7 and 227.3." Section 226.7 refers to pay for time worked during mandated meal periods, and section 227.3 refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the prevailing party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. (Code Civ. Proc. § 1032, subd. (a)(4).)

Third, Maria expressly requested attorney fees and costs pursuant to section 218.5 upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees*, and costs of suit." (Italics added.)

*3 Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the **prevailing** party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.⁴

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled*. Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages*, constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

*4 Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the **prevailing** party to recover attorney fees. (*Earley*, at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: “The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars employers from relying on section 218.5 to recover fees in any action for *minimum* wages or *overtime* compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for ‘wages, fringe benefits, or health and welfare or pension fund contributions.’ [Footnote omitted.]” (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley*, *supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.⁵

B. Apportionment Among Causes of Action

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its “refusal to pay [her] wages owed.” As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria “wages.”

*5 Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. Apportionment as to Other Plaintiffs

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the “deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases.” She also states: “respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court.”

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: [SIMONS](#), Acting P.J., and [BRUINIERS](#), J.

Footnotes

- ¹ The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.
- ² Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under [Labor Code section 206.5](#). In August 2011, we affirmed the judgment.
- ³ Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- ⁴ Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "
- ⁵ It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

EXHIBIT 12

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,
v.
SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, [S. Charles Wickersham, J.](#), granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, [Haller, J.](#), held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, [S. Charles Wickersham](#), Judge. Affirmed in part and reversed in part.

Opinion

[HALLER, J.](#)

***1** Cecilia Csaszi sued her former employer, Sharp Healthcare¹ (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. ([Code Civ. Proc.](#), §§ 473, 1008.) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. ([Lab.Code](#), § 218.5.) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

FACTUAL AND PROCEDURAL SUMMARY

In March 1996, Sharp hired Csaszi as a utilization review/quality assurance nurse responsible for evaluating patients for discharge at Tri-City Medical Center. Two and one-half years later, Csaszi's supervisors readjusted the workloads of Csaszi and a co-worker. Csaszi was unhappy about the change in her assignment, and complained about what she believed was unfair treatment. In March 1999, Csaszi was given several written notices regarding perceived problems with her performance and the need to improve to avoid being terminated. Two months later, in May 1999, Sharp terminated Csaszi, stating she had failed to properly perform her job assignments and acted in an improper manner toward other health care employees.

In December 1999, Csaszi filed a complaint against Sharp, alleging (1) employment discrimination claims (wrongful termination in violation of public policy, unlawful discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), and wrongful demotion in retaliation for complaining about racial discrimination); and (2) a claim for the failure to properly pay "on-call" wages in violation of [Labor Code section 201](#).

Sharp moved for summary adjudication on Csaszi's discrimination claims on the grounds that Csaszi could not establish she was performing her job in a satisfactory manner, Sharp had legitimate, nondiscriminatory reasons for terminating Csaszi, and Csaszi had no evidence that Sharp's stated reasons were a pretext for unlawful discrimination. Csaszi's attorney, Michael W. Loker, did not file an opposition to that motion, even though (as detailed below) Loker told Csaszi that he *had* filed an opposition.

On November 22, 2000, the court granted Sharp's summary adjudication motion, ruling that Sharp met its burden to establish a legitimate reason for Csaszi's termination and Csaszi failed to present any evidence that the proffered reason for the termination was untrue or pretextual.

*2 On the date scheduled for trial on her remaining claim, Csaszi appeared with attorney Loker, and informed the trial court that she wished to terminate Loker. The trial court granted the request and, over Sharp's objections, granted Csaszi's request for a 90-day trial continuance.

On December 14, 2000, Csaszi, represented by new counsel William Evans, filed a [Code of Civil Procedure section 1008](#) motion ([section 1008](#)), requesting the court to reconsider its summary adjudication ruling. The court denied the motion, finding the motion was not timely (it was filed more than 10 days after the summary adjudication order was entered) and Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion.

On March 9, 2001, a court trial began on Csaszi's remaining claim for unpaid wages relating to her on-call time. After considering all the evidence (which will be detailed below), the court found Csaszi failed to meet her burden to show she was entitled to unpaid wages for her on-call time.

The next month, on April 6, 2001, Csaszi moved for relief from the summary adjudication order under [Code of Civil Procedure section 473](#) ([section 473](#)). In support, Csaszi submitted her declaration, the declaration of her former attorney (Loker), and proposed responsive papers to Sharp's summary adjudication motion. The court denied the [section 473](#) motion, stating Csaszi "made no showing that a judgment, dismissal, order, or other proceeding has been taken against her as a result of her or her attorney's mistake, inadvertence, surprise, or excusable neglect, as is required by the section."

Sharp then moved for its attorney fees as the prevailing party on the FEHA and unpaid wage claims. The court initially granted the motion on both grounds, but after oral argument, concluded that Csaszi's "discrimination case was not totally groundless" and therefore awarded only those fees pertaining to the unpaid wage claim (\$20,269) based on [Labor Code section 218.5](#).

On appeal, Csaszi challenges the denial of her motions to vacate the summary adjudication and the court's rulings pertaining to the unpaid wage claim.

DISCUSSION

I. Motion for Reconsideration

Csaszi first contends the court abused its discretion in denying her motion to reconsider the summary adjudication order under [section 1008](#), which permits a court to revoke a previous order based on new or different facts and an adequate justification for the failure to previously produce those facts. The contention is unavailing.

^[1] First, the motion was untimely. [Section 1008](#) requires that a reconsideration motion be brought “within 10 days after service upon the party of written notice of entry of the order....” (See *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310.) Sharp served written notice of entry of the order on November 22, 2000, and Csaszi filed her reconsideration motion 22 days later, on December 14, 2000.

*3 ^[2] Additionally, the trial court properly denied the motion on the basis that Csaszi “fail[ed] to set forth any ‘new or different facts, circumstances, or law’ that would affect the outcome of” the summary adjudication motion. Csaszi did not proffer any new facts or law relevant to the summary adjudication ruling. Instead, she focused exclusively on explaining the circumstances of her prior attorney’s failure to adequately represent her. These circumstances do not constitute the type of “new or different facts” that permit a reconsideration of the trial court’s order under [section 1008](#).

II. Section 473 Ruling

Csaszi alternatively contends the trial court erred in denying her [section 473](#) motion seeking to vacate the summary adjudication order because of her attorney’s neglect.

A. Relevant Facts

In moving for relief under [section 473](#), Csaszi requested the trial court to vacate the summary adjudication order because the motion was granted without the benefit of her opposition papers and the failure to file an opposition was caused by her attorney’s misconduct. In support, she submitted her own declaration and copies of facsimiles (faxes) received from attorney Loker, which set forth the following facts:

Csaszi retained Loker in September 1999. Loker thereafter filed the complaint and, in April 2000, “began discovery requests.” In May 2000, Loker notified Csaszi he had attended a case management conference, and the trial date was scheduled for October 20, 2000. During the next two months, Csaszi made numerous attempts to contact Loker, but Loker did not return any of Csaszi’s telephone calls or respond to her written correspondence. In August 2000, Csaszi’s husband went to the superior court and discovered that Sharp had obtained a continuance of the trial to December 1, 2000.

On September 7, 2000, Loker called Csaszi and told her Sharp wanted to take her deposition. Csaszi expressed her concern about being unable to contact Loker, but Loker did not explain why he failed to respond to her calls and letters, and said only that he now intended to “move” on Csaszi’s case. Csaszi thereafter met with Loker on two separate days to prepare for her deposition. Sharp deposed Csaszi on three different dates, and each time Loker was present to represent her.

On October 12, Sharp filed its summary adjudication motion, but Loker did not tell Csaszi of this filing. Loker thereafter scheduled depositions of three Sharp employees, but these depositions were postponed for unspecified reasons and later rescheduled to October 30. On October 26, Csaszi met with Loker to review her deposition transcript, and she also gave Loker \$1,000 to pay for the three upcoming Sharp employee depositions. On that date, Loker also informed Csaszi about Sharp’s summary adjudication motion for the first time. Loker told her he would be filing an opposition to the summary judgment motion, but did not tell her the opposition was due on October 26.

*4 On October 30, Csaszi met with Loker to determine why the Sharp employees’ depositions were cancelled that morning. During that meeting Loker did not tell Csaszi that he had filed an ex parte application to continue the hearing on the summary judgment motion.

Ten days later, on November 9, Loker faxed Csaszi a note stating that he was in the library and that he would:

“[F]ile our response in opposition to the summary judgment today and argument is on [November] 17th, for which you will be present. Contrary to my message yesterday, I do not need your signature at this time, but I do need to see you Saturday, and I need you to drop off today the filing fee for the opposition to the Summary Judgment, payable to the Clerk of the Superior Court, in the amount of \$116. Also, the copies of your deposition are payable at this time, because I am using them in our opposition, in the amount of \$615.46, which should be by separate check, made payable to this office.... Therefore, though I need not, and cannot meet today (*because of the fact that I am in the law library today all day working on the opposition*), please drop off two drafts for the filing fee and deposition copy fee, in the amounts noted respectively. Also please leave a time in which we may meet Saturday, if you are not otherwise occupied. *I am optimistic.*” (Italics added.)

Csaszi thereafter wrote the requested checks, but Loker was not in his office when she delivered them. Csaszi telephoned Loker on a daily basis for the next eight days, but was unable to reach him and Loker did not respond to these calls. In the early morning of November 17 (the date scheduled for oral argument on the summary adjudication motion), Csaszi received a fax from Loker stating:

“The court announced yesterday that it will review the briefs submitted and rule telephonically on 22 Dec. (on the summary judgment). *I will fax you our opposition if you haven’t received.* Therefore there are no hearings today. P.S. *There was no charge for filing the opposition, a rule change.* You may ‘void’ that check, which I will destroy. Tx.” (Italics added.)

In fact, Loker never filed an opposition. Further, the applicable rules have never required a party opposing a summary judgment to pay a fee. (See Super. Ct. San Diego County, Fee Schedule & Forms List.)

In response to this fax, Csaszi repeatedly attempted to contact Loker, but was unable to reach him. Csaszi then directly contacted the superior court, and learned from the court that a trial call on her remaining claim was scheduled for December 1, 2000. The morning of December 1, Loker faxed Csaszi a note stating there was no hearing and that he intended to meet with her during the weekend to discuss the overtime pay claim. Csaszi nonetheless attended the trial call, and at the hearing, the court said that Loker was scheduled to call the court at 9:30 a.m. Csaszi confirmed that Loker was still her attorney.

*5 That weekend, Csaszi met with Loker and discussed the unpaid wage claim, but Loker refused to discuss the court’s summary adjudication ruling. The next day, Csaszi appeared at court with a written statement stating that she wanted to obtain new counsel, and the court granted the motion.

In support of her [section 473](#) motion, Csaszi also submitted Loker’s declaration which stated in relevant part: “I did not prepare an opposition to Defendant Sharp’s motion for summary adjudication on the discrimination claims. I did not feel that Csaszi would prevail on the discrimination claims and I felt that to oppose Sharp’s motion might impair her credibility on the remaining issues dealing with the overtime claim and that she would incur additional costs in opposing the discrimination part of the case. However, I was apparently unable to adequately convey my feelings regarding her chances of prevailing on these issues to her. I thought I had convinced her of my recommendations prior to the scheduled opposition to Sharp’s summary adjudication motion. She did inform me that she wanted to proceed with her discrimination claims at the December 4, 2000, hearing. [¶] There was no fault attributable to Plaintiff in any failure to make a timely filing of the opposition to Defendant’s Motion For Summary Adjudication.”

B. Legal Analysis

Under [section 473](#), a party may potentially seek two types of relief for orders entered as a result of an attorney’s neglect or mistake: one that is mandatory and one that is discretionary. (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1486, 37 Cal.Rptr.2d 575 (*Metropolitan Service*)).

First, under the mandatory provision, a court “shall” grant relief whenever an application for relief meets the six-month statutory time period *and* the motion is “accompanied by an attorney’s sworn affidavit attesting to his or her mistake,

inadvertence, surprise, or neglect” (§ 473; see *In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438, 1442, 96 Cal.Rptr.2d 546.) “The purpose of this law is to relieve the innocent client of the burden of the attorney’s fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.” (*Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575.)

^[3] This mandatory relief provision is inapplicable here because Loker, Csaszi’s former attorney, did not “attest[] to [a] mistake, inadvertence, surprise, or neglect....” Instead, in his affidavit, attorney Loker said he did not file an opposition because he made the tactical decision not to oppose the motion. This assertion does not satisfy the statute’s requirement that the attorney admit a “mistake, inadvertence, surprise, or neglect.” (§ 473, see *Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575 [mandatory relief provisions apply “if the attorney *admits* neglect”], italics added.)²

^[4] But even if a party cannot satisfy section 473’s mandatory relief requirements, the party may obtain relief under the statute’s discretionary provisions. Specifically, a court “may” grant relief if the moving party shows an order was taken against him or her because of the attorney’s *excusable neglect*. (§ 473; see *Metropolitan Service, supra*, 31 Cal.App.4th at pp. 1486-1487, 37 Cal.Rptr.2d 575.) Generally, conduct falling below the professional standard of care is considered inexcusable and therefore discretionary relief cannot be granted based on such conduct. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 895, 187 Cal.Rptr. 592, 654 P.2d 775 (*Carroll*); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, 68 Cal.Rptr.2d 228.) Csaszi asserts Loker’s conduct in failing to oppose the summary judgment was the result of professional incompetence. Therefore Loker’s conduct was not “excusable” under section 473.

*6 However, an exception to the rule requiring a showing of excusable neglect applies if the party establishes the attorney’s neglect was of an extreme degree amounting to “‘positive misconduct.’” (*Carroll, supra*, 32 Cal.3d at pp. 898-899, 187 Cal.Rptr. 592, 654 P.2d 775; see *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 72-73, 28 Cal.Rptr.2d 350.) “‘Positive misconduct is found where there is a total failure on the part of counsel to represent his client.’” (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584, 286 Cal.Rptr. 739; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738-739, 216 Cal.Rptr. 300.) The attorney’s conduct is said to obliterate the existence of the attorney-client relationship and therefore cannot be imputed to the client. (*Carroll, supra*, 32 Cal.3d at p. 898, 187 Cal.Rptr. 592, 654 P.2d 775 [“‘[a]n attorney’s authority to bind his client does not permit him to impair or destroy the client’s cause of action or defense,’” quoting *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353].)

Carroll held an attorney who “grossly mishandled” a document production did not engage in “‘positive misconduct’” because he otherwise acted on behalf of his client in the litigation including attending his client’s deposition, propounding and timely responding to interrogatories, propounding requests for admissions, settling with one of the defendants, and timely filing a section 473 motion. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) *Carroll* contrasted these circumstances with the situations in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 38 Cal.Rptr. 693 and *Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d 347, 66 Cal.Rptr. 240, where the courts found attorney misconduct had effectively deprived a party of representation. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) In *Daley*, the plaintiff’s attorney abandoned his client by failing to communicate with the plaintiff, serve necessary parties, and appear at critical hearings. (*Daley v. County of Butte, supra*, 227 Cal.App.2d at pp. 391-392, 38 Cal.Rptr. 693.) In *Orange Empire*, the defendant’s attorney failed to assert a defense, appear at the trial, or file relief from a default judgment within the statutory period. (*Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d at p. 354, 66 Cal.Rptr. 240.)

We conclude the circumstances here fall within the *Daley-Orange Empire* line of cases. Although Loker filed the complaint and was initially involved in some limited discovery, Loker completely abandoned Csaszi at a critical time by failing to file an opposition to the summary adjudication motion. Further, by falsely telling Csaszi that he was filing, *and had filed*, an opposition to the summary adjudication motion, Loker did more than abandon his client—he affirmatively precluded Csaszi from protecting herself and seeking other counsel to file an opposition or seeking timely section 1008 relief. Loker additionally continued to affirmatively harm Csaszi’s interests when he asserted in his declaration in support of her section 473 motion that his decision not to file the summary judgment motion was a tactical decision, an assertion that is flatly contradicted by his own words reflected on the faxes sent to his client. This false assertion prevented Csaszi from obtaining mandatory relief under the statute.

*7 In light of Loker’s misrepresentations to Csaszi and his submission of a declaration that contradicts his written correspondence to his client, Loker’s activities amounted to positive misconduct justifying relief under section 473. In so

concluding, we are unpersuaded by Sharp's reliance on a list of the various contacts between Loker and Csaszi during the relevant times. If anything, Loker's sporadic contacts with Csaszi made the situation worse by misleading Csaszi into believing he was taking care of her interests. (See *Fleming v. Gallegos*, *supra*, 23 Cal.App.4th at p. 73, 28 Cal.Rptr.2d 350 [trial court erred by failing to find attorney abandonment where plaintiff's "attorneys displayed an unwillingness to either prosecute her lawsuit or to cease representing her"].) Further, these contacts do not show a lack of abandonment, instead they reveal merely that Loker remained Csaszi's attorney of record. *Carroll* does not require that an attorney-client relationship be formally severed before positive misconduct may be proven.

Although a [section 473](#) motion lies within the sound discretion of the trial court, " 'the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citation.] The law strongly favors trial and disposition on the merits. Therefore any doubts in applying [section 473](#) must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343, 4 Cal.Rptr.2d 195; see *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1180-1181, 75 Cal.Rptr.2d 809.) Applying these principles here, we conclude the trial court abused its discretion in failing to vacate the summary adjudication based on Csaszi's showing that her counsel engaged in "positive misconduct."

¹⁵¹ We note that Sharp does not argue, nor does the law permit, this court to sustain the trial court's denial of the [section 473](#) motion on the alternate ground that Csaszi's proposed opposition to the summary adjudication motion does not raise a triable issue of fact. In considering the propriety of a court's ruling on a [section 473](#) motion, an appellate court is limited to the question whether the court abused its discretion in granting or denying the motion, and may not reach the substantive issue as to whether the position proffered by the party seeking relief has merit. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 786-787, 59 Cal.Rptr.2d 332; see 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 184 at p. 692, 59 Cal.Rptr.2d 332.)³

Finally, we reject Sharp's argument that the trial court properly denied the [section 473](#) motion because the motion constituted an "end-run" around [section 1008](#) governing reconsideration motions. Because Csaszi satisfied the requirements of a [section 473](#) motion, the fact that the motion was not timely under [section 1008](#) does not defeat the grounds for granting the motion under [section 473](#).

III. Unpaid Wage Claim

*8 Csaszi next contends the court erred in failing to find in her favor on the unpaid wage claim, which was tried before the court sitting without a jury.

The evidence at trial showed that Csaszi was assigned to on-call shifts during which she was given a pager and was responsible for answering telephone calls pertaining to patients discharged outside of regular business hours. Sharp paid its on-call employees \$2.50 per hour for time spent on-call but not actually working, i.e., being available for a call. For time spent actually answering a call (known as "call-back time"), Sharp paid its employees one and one-half times the employee's regular hourly rate of pay, regardless whether this time reflected overtime work. Csaszi was paid \$2.50 for each hour that she reported she was on-call, and would have been paid her overtime rate if she had reported any time answering calls.

The essential basis of Csaszi's unpaid wages claim at trial was that Sharp was required to pay her time and one-half for her on-call time (when she was not actually answering calls) instead of \$2.50 because this time was devoted primarily to her employer's interests. In support, Csaszi relied on federal law providing that an employee should be fully compensated for on-call time if the time is spent " 'primarily for the benefit of the employer and his business.' " (*Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132, 65 S.Ct. 165, 89 L.Ed. 118.)

To show that her on-call time was spent primarily for Sharp's benefit, Csaszi testified that when she was on-call she was unable to attend to her personal activities and she was paged "very frequently." She said that during her entire on-call period, she would sit in a room with a telephone, facsimile machine and documents needed to perform her job duties. Csaszi claimed she could not shop, cook, sleep, travel, interact with her family or otherwise engage in any personal activities. Csaszi sought \$40,380, calculated as the total number of on-call hours multiplied by the time and one-half rate subtracted by the amount she

was paid per hour (\$2.50). Csaszi had no record of the time she actually responded to calls, explaining that she never identified this time on her timesheets because she did not understand how to do so.⁴

In contrast to this evidence, Sharp presented the testimony of its human resource director who said that employees were instructed on the manner in which they should report call-back time and that the employees did not need to limit their activities while waiting for a call. Sharp employees corroborated this testimony. These employees testified that while on-call, they wore pagers and attended to various personal activities, including cooking, shopping, attending church services, and entertaining. The pagers given to the employees had a range of at least 250 miles, and therefore the employees were free to travel throughout Southern California. Csaszi's co-workers testified they received varying numbers of calls while on-call, which averaged two to four per week, and that they knew how to claim this call-back time on their timesheets. The employees were required to respond to a pager within a 15- or 20-minute period. The employees were always paid time and one-half for the time they were actually answering a call.

***9** After considering the evidence, the court stated: "The issue to be decided is whether the requirements of being on-call as a discharge planner precluded [Csaszi] from using the time effectively for her own purposes, thus entitling her to back wages. [Citations.] [¶] The Court finds that although [Csaszi] may have subjectively believed that she needed to avoid engaging in personal activities while on-call, the evidence shows that the job duties of being on-call did not require her to do so. The fact that Ms. Csaszi elected not to engage in personal activities while on-call may be laudable, but it does not transform the on-call time to working time compensable under statute. Both the written policies of the employer as well as the actions of the employees indicate that the express and implied agreement was that employees would be paid \$2.50 for time spent on-call but not actually working and one and one-half times their regular hours rate for time spent actually working while on-call. [¶] Based on the above-stated findings and the fact that [Csaszi] did not offer any evidence specifying the dates or hours she actually worked while on-call, the Court finds that [Csaszi] has failed to meet her burden to show that she is entitled to back wages...."

^[6] We find no error. Although there is no California law directly on point, federal law sets forth appropriate standards for determining Csaszi's claim to additional wages for on-call time. Under this law, an employee must be fully compensated for on-call time spent primarily for the employer's benefit, and the question whether the time is spent primarily for the employer depends on numerous factors and a consideration of these factors in the context of the particular circumstances of the case. (See *Armour & Co. v. Wantock*, *supra*, 323 U.S. at p. 133; *Berry v. County of Sonoma* (9th Cir.1994) 30 F.3d 1174, 1183.) Although no single factor is dispositive, the predominant considerations are the agreement of the parties and the degree to which the employee is free to engage in personal activities. (*Owens v. Local No. 169, Assn. of Western Pulp & Paper Workers* (9th Cir.1992) 971 F.2d 347, 350-354.) The court must balance the factors permitting personal pursuits against the factors restricting personal pursuits to determine whether the employee is "so restricted that he is effectively engaged to wait." (*Berry v. County of Sonoma*, *supra*, 30 F.3d at p. 1183.)

Applying these principles, the trial court found Sharp's evidence credible, and concluded that the time Csaszi spent on-call was not time that was required to be spent predominately for the employer's benefit. Substantial evidence supports the court's factual conclusion. The court, as the finder of fact, was entitled to reject Csaszi's contrary evidence.

In nonetheless challenging the court's factual conclusions, Csaszi contends that Sharp's agreement to pay \$2.50 during on-call hours "amounted to an admission that [Sharp] maintained control over the employees" and therefore the trial court was required to find as a matter of law that Sharp was under a mandatory obligation to pay the same pay rate that it applied for call-back work.

***10** This argument is unsupported factually and legally.

First, the fact that Sharp paid employees \$2.50 per hour to be available to respond to phone calls was not an admission that the time spent was primarily for Sharp's benefit. Instead, Sharp's human resources director specifically testified that employees were paid for being on-call as "an incentive for carrying the pager and being available on call." She explained the pay was "additional compensation that was paid to carry the pager, to be available during a specific time should additional work be needed by that individual." She emphasized that during this waiting time, the "time is not controlled [by Sharp]" and that employee "is free to move around, engage in personal activities."

Csaszi's position is also legally unsupported. Csaszi relies solely on *Paniagua v. City of Galveston, Texas* (5th Cir.1993) 995 F.2d 1310 and *Berry v. County of Sonoma, supra*, 30 F.3d at p. 1178. In *Paniagua*, the court specifically rejected the identical argument asserted here-that an employer's agreement to compensate employees for the inconvenience of being on call "automatically render[s] the time spent on standby 'working time'...." (995 F.2d at p. 1317.) In *Berry*, the court noted that an employer's agreement to provide "at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work," but the court made clear that this was merely one of many factors in the overall analysis. (*Berry v. County of Sonoma, supra*, 30 F.3d at p. 1181 .)

The trial court here expressly noted the evidence showing that Sharp paid \$2.50 for on-call waiting time, but stated that based on the totality of the circumstances, this payment was merely compensation for the inconvenience of carrying a pager and did not reflect that the time spent by on-call employees was for the employer's benefit. Substantial evidence supported the trial court's conclusion.

Csaszi failed to establish that the trial court erred in reaching its factual conclusions with respect to the unpaid wage claim or that the court erred in applying these factual findings to the applicable legal principles.

IV. Attorney Fees

^[7] The trial court awarded \$20,269 in attorney fees to Sharp under [Labor Code section 218.5](#), which provides in relevant part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."⁵

Csaszi contends the court erred in awarding fees under this section because the applicable statute is [section 1194](#), which contains a "one-way" fee provision, permitting attorney fees only for a prevailing employee and not for a prevailing employer. [Section 1194](#), subdivision (a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance ..., including interest thereon, reasonable attorney's fees, and costs of suit."

*11 Both [sections 218.5](#) and [1194](#) potentially apply to an action seeking overtime wages, but establish different attorney fees rules. In *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 95 Cal.Rptr.2d 57, the court noted the potential conflict between the code sections, and concluded the Legislature intended that [section 1194](#) alone applies to recovery of attorney fees for overtime compensation claims, even though such claims could be construed as seeking payment of wages under [section 218.5](#). In a well-reasoned decision, the court explained that the only reasonable interpretation of the Legislature's one-way fee shifting rule in [section 1194](#) "would be one which bars employers from relying on [section 218.5](#) to recover fees in any action for *minimum* wages or *overtime* compensation. [Section 218.5](#) would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained for 'wages....' [¶] Such a harmonization of these two sections is fully justified. An employee's right to wages and overtime compensation clearly have different sources. Straight-time wages ... are a matter of private contract between the employer and employee. Entitlement to overtime compensation, on the other hand, is mandated by statute and is based on an important public policy.... 'California courts have long recognized [that] wage and hour laws "concern not only health and welfare of the workers themselves, but also the public health and general welfare." ... [¶] There can be no doubt that the one-way fee-shifting rule in [section 1194](#) was meant to 'encourage injured parties to seek redress-and thus simultaneously enforce [the minimum wage and overtime laws]-in situations where they otherwise would not find it economical to sue.' [Citation.] To allow employers to invoke [section 218.5](#) in an overtime case would defeat that legislative intent and create a chilling effect on workers who have had their *statutory* rights violated. Such a result would undermine statutorily-established public policy. That policy can only be properly enforced by a recognition that [section 1194](#) alone applies to overtime compensation claims." (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1430, 95 Cal.Rptr.2d 57.)

We agree with the *Earley* court that when an employee seeks overtime wages, the attorney fees rules are exclusively set forth in [section 1194](#). However, that principle is inapplicable here because Csaszi never alleged, or sought to prove at trial, that Sharp failed to pay her for overtime work. Instead, Csaszi brought her claim to enforce Sharp's alleged agreement that it would pay time and one-half for time spent working outside of the hospital's physical environment and that on-call time constituted "working" under established legal principles. The claim at issue concerned solely a matter of private contract

between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of [section 1194](#). Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under [section 218.5](#).

*12 Csaszi alternatively argues that even if [section 218.5](#) is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at “the initiation of the action.” (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees “if *any* party to the action requests attorney’s fees and costs upon the initiation of the action .” (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be “awarded its costs of suit and attorney fees incurred therein....” That statement is sufficient to satisfy [section 218.5](#)’s requirement that attorney fees be requested at the “initiation of the action.”

DISPOSITION

We affirm the portions of the judgment finding in Sharp’s favor on Csaszi’s claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi’s first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp’s motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: [KREMER](#), P.J., and [BENKE](#), J.

Footnotes

¹ Although it appears that the correct name of Csaszi’s former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi’s complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant’s name.

² Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether [section 473](#)’s mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare *English v. Ikon Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with *Avila v. Chua* (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)

³ We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a [section 473](#) motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi’s proposed opposition filings contained in the appellate record.

⁴ Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.

⁵ All further statutory references are to the Labor Code.

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EXHIBIT 13

2009 WL 4718721

Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S-07-2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

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Kimberley Ann Worley, [Stephen R. Holden](#), Holden Law Group, Auburn, CA, for Defendant.

Opinion

ORDER

[LAWRENCE K. KARLTON](#), Senior District Judge.

*1 On August 19, 2009, the court granted defendants' motion for judgment on the pleadings, dismissing four of plaintiffs' causes of action for failure to state a claim, and dismissing the fifth and sole remaining cause of action for lack of subject matter jurisdictions. Defendants have submitted a bill of costs and separately moved for attorneys' fees, both of which have been opposed by plaintiffs. The court resolves the matter on the papers and after oral argument. For the reasons stated below, defendants' motion for fees and costs is granted in part.

I. BACKGROUND

Defendants Heidi and James Guertin allegedly operate a business under the name Norcal Plastering. Plaintiffs, four individuals formerly employed by Norcal, filed suit purporting to represent themselves and others similarly situated. The complaint stated five causes of action, for violations of (1) [California Labor Code section 1194](#), (2) the Fair Labor Standards Act, (3) [California Labor Code section 226.7](#), (4) [California Labor Code section 203](#), and (5) [California Business and Professions Code section 17203](#).

On August 19, 2009, the court held that plaintiffs' allegations were insufficient to support the second through fifth claims. The Fair Labor Standards Act claim failed because plaintiffs had not alleged facts sufficient to support the inference that Norcal Plastering or plaintiffs themselves engaged in interstate commerce, a predicate for liability under the act. Order at 8-11. The Third, Fourth, and Fifth claims failed because the allegations therein pertained to entities not party to this suit. *Id.* at 11-12. The court denied plaintiff's request for leave to amend to correct these deficiencies, explaining that plaintiffs had notice of these deficiencies before the scheduling order was entered, but that plaintiffs had taken no action to correct them until discovery in the case had closed. The court dismissed these claims, and declined to retain supplemental jurisdiction over plaintiffs' sole remaining claim. Judgment on the pleadings under [Fed.R.Civ.P. 12\(c\)](#) was entered for defendants on August 19, 2009.

Defendants filed a bill of costs and motion for attorneys fees. Plaintiffs oppose both, arguing that defendants were not

“prevailing parties” because, as plaintiffs understood this court’s August 19, 2009 order, the state law claims had been dismissed without prejudice, and plaintiffs were free to refile the federal claim in federal court. Plaintiffs alternatively argue that even if defendants prevailed, they are not entitled to a fee award under the court’s inherent power or under any statute.

II. DISCUSSION

A. Defendants Are A Prevailing Party

Under all of the fee shifting authorizations at issue in this case, fees and costs are only available to prevailing parties. Under California law, “a defendant in whose favor a dismissal is entered” is a prevailing party. [Cal.Code Civ. P. § 1032\(a\)\(4\)](#). Under federal law, a party has not prevailed unless it “experienced an alteration in the legal relationship” with the other parties. [Avery v. First Resolution Management Corp.](#), 568 F.3d 1018, 1024 (9th Cir.2009). Plaintiffs argue that the court’s order permits plaintiffs to refile each of their claims, and that as a result, no such change has occurred. *Id.*, [Oscar v. Alaska Dep’t of Educ. & Early Dev.](#), 541 F.3d 978, 982 (9th Cir.2008).

*2 Plaintiffs misunderstand the nature of the prior order and its effect under California and federal law. [Fed.R.Civ.P. 41\(b\)](#) provides that “[u]nless the dismissal order states otherwise ... any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” Thus, although the dismissal order did not specifically state that it was “on the merits” or “with prejudice,” dismissal of the second through fifth claims was precisely such an adjudication. [Stewart v. United States Bancorp](#), 297 F.3d 953, 956 (9th Cir.2002). Plaintiffs’ contention that a dismissal for failure to allege the elements of a cause of action is not a substantive dismissal is without merit. *Id.*

Plaintiffs’ first claim, which was dismissed for lack of subject matter jurisdiction, was not adjudicated on the merits. [Avery](#), 568 F.3d at 1024. The fact that plaintiff may refile this one claim does not defeat defendants’ claim to prevailing party status as to the others.

B. Particular Fee Shifting Provisions

Defendants argue that they are entitled to fees under [28 U.S.C. section 1927](#), under [Cal. Lab.Code section 218.5](#), and under the court’s inherent authority. The court discusses each in turn.

1. [28 U.S.C. § 1927](#)

“Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” [28 U.S.C. § 1927](#). Here, defendants have not identified any act by which plaintiffs multiplied the proceedings. Filing of the initial complaint cannot itself violate this section. “Because the section authorizes sanctions only for the ‘multipli[cation of] proceedings,’ it applies only to unnecessary filings and tactics once a lawsuit has begun.” [Moore v. Keegan Mgmt. Co. \(In re Keegan Mgmt. Co., Sec. Litig.\)](#), 78 F.3d 431, 435 (9th Cir.1996). Nor did plaintiffs’ counsel’s response to depositions noticed by defendants “multipl[y] the proceedings.”

Rather than identify affirmative acts, defendants argue that plaintiffs’ counsel multiplied proceedings by failing to withdraw and dismiss the case after the close of discovery. The only authority provided for this interpretation of [section 1927](#) is a case from the Southern District of Florida. See [Murray v. Playmaker Servs., LLC](#), 548 F.Supp.2d 1378, 1383 (S.D.Fla.2008). The court respectfully disagrees, and thereby declines to conclude that an attorney multiplies proceedings simply by failing to voluntarily dismiss an existing lawsuit.

2. The Court's Inherent Powers

The court has an inherent authority to order payment of fees as a sanction “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for an improper purpose.” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir.2001) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 and n. 10, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); see also *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In this case, defendants argue that plaintiffs have done a poor job of litigating this case, and that this demonstrates that they filed their a purported class action for the allegedly improper purpose of pressuring defendants to settle, rather than for any belief as to the action's merits. This argument is unsupported. Although, as noted in the order granting defendants' motion for judgment on the pleadings, plaintiffs did little in the litigation of this case, this does not demonstrate bad faith or other grounds for sanction under the court's inherent authority.

*3 Defendants also argue that plaintiffs have demonstrated bad faith by filing a complaint in state court that re-alleges the four the state-law claims previously filed in this court. Whether that filing is in bad faith is an issue for the state court.

3. Cal. Lab.Code § 218.5

Lastly, defendants argue that the court should award fees under [California Labor Code section 218.5](#). This statute provides that “in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party.” [Cal. Lab.Code § 218.5](#). The Ninth Circuit has held that this provision may be applied in suits filed in federal court. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815 (9th Cir.2009) (affirming award of fees to a prevailing plaintiff); see also *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir.1985) (“federal courts in diversity actions apply state law with regard to the allowance (or disallowance) of attorneys' fees.”). The court concludes that this section applies to one of plaintiffs' claims, that an award of fees is mandatory and not limited to cases in which plaintiffs acted wrongfully, and that defendants prevailed for purposes of this statute.

First, [section 218.5](#) does not apply to all wage claims. The statute contains an exemption, specifying that “[t]his section does not apply to any action for which attorney's fees are recoverable under [\[California Labor Code\] Section 1194](#).”¹ [Section 1194](#) governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim “for nonpayment of wages” under [section 218.5](#).² See *Murphy v. Kenneth Cole Production, Inc.*, 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within [section 218.5](#), and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg*'s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg*, 434 U.S. at 416; see also 42 U.S.C. § 2000e–5(k) (“the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.”).³ The Court's holding directed the lower courts in their exercise of this discretion. [Section 218.5](#), in contrast, provides that the court “shall” award fees. “As used in the Labor Code, ‘shall’ is mandatory.” *Smith v. Rae–Venter Law Group*, 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. [Cal.Code. Civ. P. § 1032\(a\)\(4\)](#), *On–Line Power, Inc. v. Mazur*, 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by [section 218.5](#), a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.⁴

*4 Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond*, 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request \$29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at \$315 per hour.⁵ The court has previously held that \$300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond*, 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. See Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

*5 Thus, defendants are entitled to a fees for 70.6 hours of work at \$300 per hour, or \$21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of \$1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT 14

05-30-2013 | 05:13 PM | Author: [Robin Shea](#)

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)



Earlier, I busted on "my own side" by giving [four reasons why employers shouldn't be so quick to fire their employees](#). To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid legal claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

*Most people consider a lawsuit an "act of war." They probably were on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to sue! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. AWKWARD! No wonder they've turned on you.

*Some employees really, sincerely do believe the company was in the right. Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really were very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

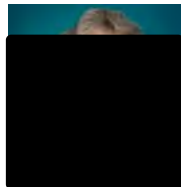
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably don't have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents employees in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the [Employment and Labor Law Insider](#) for additional insights from [Robin Shea](#), a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

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Tags: [employee lawsuits](#)

EXHIBIT 15

April 29, 2014

HUFF
POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning - make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

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Highlighted Most Recent Oldest Most Faved My Conversations

Pippen
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2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

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1

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

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kjk326

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Excellent article, right on topic. I went through this nightmare & found just how chilling & hostile a formerly friendly environment can become overnight. People who were your close friends hesitate to talk to you and avoid being seen with you. Your every move is put under the microscope and twisted into some type of bad behavior while the person who committed the illegal act is lauded and promoted and you are made to feel like a social outcast at best and I say this even though in the end I prevailed. You are left so emotionally drained, sadly it seems to be the American way; forget ethics, it's the dollar that prevails. Most of all I don't know how HR people sleep at night when they defend someone they know clearly committed an illegal act,

10 JAN 2012 8:34 PM

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Janice Harper

HUFFPOST BLOGGER · 218 Fans

Thank you for sharing your experience. I think it's significant that you say in the end you prevailed -- sadly, that is the sixth myth -- that it will all be worth it. It rarely is. The toll on the worker who pursues an employment claim is enormous, and few attorneys, no matter how skilled, adequately prepare plaintiffs for what's up ahead. I'm so sorry you had to go through it.

Yet we have made great advances in working conditions in the U.S. in part due to lawsuits, and there are cases where workers are left with no recourse but to turn to the courts. In those cases, the more a person knows what to expect and how to be prepared, the better the emotional outcome. Thank you again for sharing your story.

10 JAN 2012 8:55 PM

FAVE SHARE MORE

3 PEOPLE IN THE CONVERSATION

Read Conversation →

noahmarder

512 Fans · Exposing the regressive lies, one by one

There is no justice in this country. What else is new? Risk/reward probably favors stealing from your employer rather than suing them. At least with theft, your career is ruined only if you get caught. You also have a better chance of stealing significant money than of winning anything but an airtight case. I don't see a moral problem either, so long as what is stolen doesn't exceed the damage done by the employer, plus the effort required for the theft, plus the chance of being caught multiplied by the penalty

for being caught. It is the employer, after all, who has taken away any legal remedies through the retaliation mechanisms described in the article.

10 JAN 2012 9:09 PM

FAVE SHARE MORE

Pippen

287 Fans

If you think all of that is bad apply it to Texas where employment is an "at will" state. Another way of putting this would be outright slavery and the slave master can fabricate reality on how they feel that morning and your life is forever changed.

America sets itself apart from 3rd world countries with the argument that we have a

- 1 Superior Justice System
- 2 Freedom of religion
- 3 Separation of Church and State
- 4 Opportunity to pursue your capitalist dreams of career and family
- 5 That taxes pay for your well being (roads, FDA, national safety etc..)
- 6 National security (threat of invasion and subjugation by an enemy rule...)
- 7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

FAVE SHARE MORE

EXHIBIT 16

Case title:	Arlene Apodaca v. R And T Oil Incorporated
Case no.:	CVRI2402196
Court:	Riverside
Judge:	The Honorable Harold W. Hopp, Dept. 10
Page subject:	Class and PAGA Settlement Division

Gross Settlement Amount (GSA)	\$	200,000.00	Percentage of GSA
Class Counsel Fees Payment	\$	66,666.66	33.33%
Class Counsel Litigation Expenses Payment	\$	20,000.00	10.00%
Administration Expenses Payment	\$	6,000.00	3.00%
Class Representative Service Payment	\$	10,000.00	5.00%
PAGA Penalties	\$	5,000.00	2.50%
>> LWDA PAGA Payment Percentage		75%	
>> LWDA PAGA Payment	\$	3,750.00	1.88%
>> Individual PAGA Payments Percentage		25%	
>> Individual PAGA Payments	\$	1,250.00	0.63%
Net Settlement Amount	\$	92,333.34	46.17%
Floor		100%	
Minimum Payout	\$	200,000.00	100.00%

Percentage of Individual Class Payments taxable as wages	20.00%
Wages portion of Net Settlement Amount	\$ 18,466.67

Class Members	55
Average Individual Class Payment	\$ 1,678.79
Average hourly rate of pay	\$ 15.68
Hours of pay per average Individual Class Payment	107.07
Workweeks	1,272
Workweek Value	\$ 72.59
Class Period Begin Date	Sunday, April 19, 2020
Estimated Class Period End Date (preliminary approval granted)	Sunday, November 15, 2026
Workweeks per year	52
Maximum Workweeks in Class Period	342.06
Minimum Workweeks in Class Period	1.00
Maximum Individual Class Payment (high)	\$ 24,829.85
Minimum Individual Class Payment (low)	\$ 72.59
Plaintiff's first date of employment	Saturday, October 14, 2023
Plaintiff's last date of employment	Sunday, December 10, 2023
Plaintiff's first date of employment in Class Period	Saturday, October 14, 2023
Plaintiff's last date of employment in Class Period	Sunday, December 10, 2023
Number of Plaintiff's Workweeks in Class Period	8
Plaintiff's Individual Class Payment	\$ 589.46

Aggrieved Employees	25
Average Individual PAGA Payment	\$ 50.00
Aggrieved Employee Paychecks	936
Aggrieved Employee Paycheck value	\$ 1.34
PAGA Period Begin Date	Wednesday, April 19, 2023
PAGA Period End Date	Sunday, November 15, 2026
Paychecks per year	52
Maximum Aggrieved Employee Paychecks in PAGA Period	186.06
Minimum Aggrieved Employee Paychecks in PAGA Period	1.00
Maximum Individual PAGA Payment (high)	248.48
Minimum Individual PAGA Payment (low)	\$ 1.34
Plaintiff's first date of employment	Saturday, October 14, 2023
Plaintiff's last date of employment	Sunday, December 10, 2023
Plaintiff's first date of employment in PAGA Period	Saturday, October 14, 2023
Plaintiff's last date of employment in PAGA Period	Sunday, December 10, 2023
Number of Plaintiff's Paychecks in PAGA Period	8
Plaintiff's Individual PAGA Payment	\$ 10.72

EXHIBIT 17

APEX
CLASS ACTION ADMINISTRATION

Quotation Request:

Nora Greer
Spivak Law
nora@spivaklaw.com

Case Name: Apodaca/R And T Oil Incorporated

Date: Tuesday, November 25, 2025

RFP Number: 20150005

Prepared By:

Michael Sutherland
Apex Class Action LLC
mike@apexclassaction.com
321.223.5067

Settlement Specifications	
Estimated Class Size:	55
Certified Language Translation:	Yes
Static Settlement Website:	Yes
Percentage of Undeliverable Mail:	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	1	\$125.00
Data Analyst	Per Hour	\$150.00	1	\$75.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$200.00

Mailing of Class Notice				
Form Set Up	Per Hour	\$120.00	1	WAIVED
Print & Mail Class Notice	Per Piece	\$1.50	55	\$82.50
USPS First Class Postage	Per Piece	\$0.78	55	\$42.90
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$2.00	6	\$11.00
Receive and Process Undeliverable Mail	Per Hour	\$75.00	1	\$37.50
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	1	\$37.50
NCOA Address Update (USPS)	Static Rate	\$10.00	1	\$10.00
Certified Language Translation: Spanish	Static Rate	\$750.00	1	\$750.00
Sub Total:				\$971.40

Project Management				
Project Management	Per Hour	\$150.00	1	\$150.00
Project Coordinator	Per Hour	\$90.00	1	\$90.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$70.00
Sub Total:				\$310.00

APEX
CLASS ACTION ADMINISTRATION

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$50.00	1	\$50.00
Settlement Status Reports	Static Rate	\$750.00	1	WAIVED
Static Apex Website	Static Rate	\$250.00	1	\$250.00
			Sub Total:	\$300.00

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	1	\$120.00
Account Management and Reconciliation	Per Hour	\$140.00	1	\$140.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.50	55	\$82.50
USPS First Class Postage	Per Piece	\$0.78	55	\$42.90
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$1.50	6	\$8.25
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	3	\$300.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,200.00	1	\$1,200.00
Unclaimed Funds: State Controller's Unclaimed Property Fund-CCP 384	Static Rate	\$150.00	1	\$150.00
			Sub Total:	\$2,043.65

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	1	\$67.50
Project Management Reconciliation	Per Hour	\$100.00	1	\$100.00
Declarations	Per Hour	\$120.00	1	\$120.00
			Sub Total:	\$287.50

TOTAL CAPPED ADMINISTRATION COST:				\$3,990.00
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Thank you for your business!

Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. Services: Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. Payment Terms: As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. Incurred Expenses: In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. Invoicing: Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. Case Duration: The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. Termination of Services: Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. Independent Contractor: As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.

9. Limitation of Liability: The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. Indemnification: The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. Confidentiality: Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.

14. COMPLETE AGREEMENT. These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. Force Majeure: In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.

18. Severability: This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. Nonwaiver: This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT 18

ILYM | GROUP, Inc.

C L A S S A C T I O N A D M I N I S T R A T I O N

Case Name: Apodaca v. R And T Oil Incorporated

Tuesday, November 25, 2025

Requesting Attorney:

Nora Greer
The Spivak Law Firm
nora@spivaklaw.com
818.205.9033

ILYM Group Contact:

Lisa Mullins
ILYM Group, Inc.
Lisa@ilymgroup.com
714.878.8836

Estimate For Administrative Solutions: Class & PAGA

KEY ASSUMPTIONS	
Total Number of Class Members	55
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	Yes
Case Duration (Years)	1

Summary of ILYM Group, Inc.'s Fees & Expenses

Case Startup:	\$325.00
Project Management:	\$2,645.00
Notification & Mailing:	\$281.20
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$2,133.80
Case Conclusion:	\$965.00

Estimated ILYM Fees & Expenses: \$6,350.00

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Apodaca v. R And T Oil Incorporated

Tuesday, November 25, 2025

Requesting Attorney's Name: Nora Greer

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$325.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	1	\$70.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
ILYM Group Static Website	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$25.00	1	\$25.00
Toll Free Customer Service Representative	Flat Fee	\$50.00	1	\$50.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$2,645.00

NOTIFICATION & MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$1.50	55	\$82.50
USPS First Class Postage	Per Piece	\$0.85	55	\$46.75
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	8	\$16.50
Storage, Photocopies, Deliveries	Flat Fee	\$135.45	1	\$135.45

Subtotal \$281.20

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Apodaca v. R And T Oil Incorporated

Tuesday, November 25, 2025

Requesting Attorney's Name: Nora Greer

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	1	\$150.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	1	\$125.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$1.00	55	\$55.00
USPS First Class Postage	Per Piece	\$0.74	55	\$40.70
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	6	\$8.25
Reminder Postcard for Uncashed Checks	Per Piece	\$0.90	17	\$14.85
Preparation of Taxes	Hourly	\$120.00	2	\$240.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$2,133.80

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Unclaimed Funds	Flat Fee	\$500.00	1	\$500.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$965.00

Estimated ILYM Fees & Expenses: \$6,350.00

ILYM Group's Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the permissible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 19



December 2, 2025

CASE ASSUMPTIONS

Class Members	55
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	54
Subtotal Admin Only	\$5,643.88

Flat Fee Total \$5,000.00

For 55 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: Apodaca v. R and T Oil Inc., Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
 Contact Number: 949.331.0131
 Email: mike@phoenixclassaction.com

Requesting Attorney: Nora Greer
 Firm: The Spivak Law Firm
 Contact Number: (818) 582-3073
 Email: nora@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
 Estimate is based on **55** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	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	6	\$12.00
NCOA (USPS)	\$10.00	1	\$10.00
Total			\$322.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Language Translation	\$900.00	1	\$900.00
Data Merge & Duplication Scrub	\$0.10	55	\$5.50
Notice Packet & Opt-Out Form	\$1.35	55	\$74.25
Estimated Postage (up to 2 oz.)*	\$0.90	55	\$49.50
Static Website	\$200.00	1	\$200.00
Total			\$1,429.25

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$60.00	1	\$60.00
Skip Tracing Undeliverables	\$1.00	8	\$8.25
Remail Notice Packets	\$1.00	5	\$5.25
Estimated Postage	\$0.90	5	\$4.73
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$178.23

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	3	\$165.00
Deficiency & Dispute Letters	\$10.00	0	\$0.00
Case Manager	\$85.00	1	\$85.00
Total			\$600.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$135.00	1	\$135.00
Disbursement Review	\$135.00	1	\$135.00
Programming Manager	\$95.00	1	\$95.00
QSF Bank Account & EIN	\$135.00	1	\$135.00
Check Run Setup & Printing	\$135.00	1	\$135.00
Mail Class Checks *	\$0.90	54	\$48.60
Estimated Postage	\$0.70	54	\$37.80
Total			\$721.40

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



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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	\$50.00	1		\$50.00
Remail Checks (Postage Included)	\$2.00	9		\$18.00
Case Associate	\$55.00	2		\$110.00
Reconcile Uncashed Checks	\$85.00	2		\$170.00
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				\$2,393.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$5,643.88



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CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 20