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10 Attorneys for Plaintiff(s),

11 MARIA JACQUELINE BATRES, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 **(UNLIMITED JURISDICTION)**

15 MARIA JACQUELINE BATRES, on behalf of
16 herself, all others similarly situated, the general
17 public, and as an “aggrieved employee” on behalf
18 of other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

19 *Plaintiff(s),*

20 vs.

21 DIMENSION DEVELOPMENT COMPANY,
22 INC., a Louisiana corporation; DR HOTEL
23 EMPLOYEE LEASING LLC, a Delaware
24 limited liability company; DIMENSION
25 DEVELOPMENT TWO, LLC, a Louisiana
limited liability company; and DOES 1–50,
inclusive,

26 *Defendant(s).*

Case No. 24STCV28018

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF MARIA
JACQUELINE BATRES’S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**



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Complaint, and those based solely upon the facts alleged in the Operative Complaint.

7. **Release Period.** 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.

8. **PAGA Release.** Under the Settlement, 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. The PAGA Release states as follows: Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California, releases Released Parties from all claims and/or theories of liability for civil penalties under PAGA that have been or could have been asserted in any of the pleadings that have been filed in the Action based the facts and theories alleged therein and in the PAGA Notice including, but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, the relevant Wage Orders issued by the Industrial Welfare Commission, claims for attorneys' fees and costs, and derivative claims for civil penalties. Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. *Id.*, ¶ 6.3.

No Reversion

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

Taxes

10. The Settlement provides that Defendants will separately pay the employer's share of any applicable payroll taxes. 10.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 90.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. *Id.*, ¶ 3.2.4.1. Aggrieved Employees assume full responsibility and liability for



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any taxes owed on their Individual PAGA Payment. *Id.*, ¶ 3.2.5.1.

11. The Settlement provides as follows with regard to the tax treatment of settlement shares: 10.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 90.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. *Id.*, ¶ 3.2.4.1. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. *Id.*, ¶ 3.2.5.1.

Factual and Procedural Background

12. **Plaintiff's Employment with Defendants.** Defendants are hospitality staffing companies for hotels. Defendants employed Plaintiff as a housekeeper in California from about July 8, 2022 until May 29, 2024.

13. **LWDA Notice.** On October 24, 2024, Plaintiff notified Defendants and the California Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor Code violations committed by Defendants. A true and correct copy of the letter to the LWDA dated October 24, 2024 is attached hereto as **Exhibit 2**.

14. **Lawsuit.** On October 25, 2024, Plaintiff filed a Class Action Complaint in the Los Angeles County Superior Court, Case No. 24STCV28018, against Defendants on behalf of herself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (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) Wage Statement Penalties (Lab. Code § 226); (5) Waiting Time Penalties (Lab. Code §§ 201-203); and (6) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). On December 30, 2024, Plaintiff filed her First Amended Complaint adding a claim under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). On April 3, 2025, Defendants filed an answer to Plaintiff's First Amended Complaint. Defendants deny all of Plaintiff's allegations and strongly contend that their wage and hour



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1 policies, practices and procedures are fully compliant with all applicable laws. A true and correct
2 copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff's First
3 Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Defendants'
4 Answer is attached hereto as **Exhibit 5**.

5 15. **Investigation.** On March 24, 2025, Plaintiff requested that Defendants informally
6 disclose documents and data to enable Plaintiff to prepare for settlement discussions, including
7 the number of putative class members and aggrieved employees, the number of paychecks and
8 workweeks for the various limitations periods applicable to Plaintiff's claims. Plaintiff also
9 requested a reasonable, randomly selected sample of Defendants' time, payroll, and expense
10 records, and related personnel records. Finally, Plaintiff requested Defendants' written policies
11 applicable to the claims at hand and asked Defendants identify any and all comparable claims
12 against them.

13 16. The Parties thereafter engaged in an informal, voluntary exchange of information
14 in the context of privileged settlement discussions to facilitate an early mediation. Defendants
15 produced Plaintiff's entire personnel file (including policies and agreements she signed and
16 acknowledged) and copies of their relevant company written policies.

17 17. **Sampling.** Defendants contend that they employed 106 putative class members
18 during the period of October 25, 2020 to November 15, 2023. Defendants produced the records
19 of 106 of the putative class members for the period of October 25, 2020 to November 15, 2023.
20 The sample consisted of time records, payroll records, policies, and related records.

21 18. **Plaintiff's Data Analyst.** Plaintiff retained Antonio Whitfield, a data analyst, to
22 analyze the sample. Plaintiff also employed the Raosoft⁶ Sample Size calculator
23 (<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically
24 reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014)
25 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable

26 ⁶ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the
27 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
28 programs for information gathering and analysis. The family of survey software supports data
collection and reporting for any form-based data. Support is for web-surveys and forms, email
distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage
advertises that is it "database web survey software for gathering information."
<http://www.raosoft.com/>. It also advertises, "The parameters of the sample size calculation are
something that you choose." <http://www.raosoft.com/suggestreading.html>.



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1 whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using
2 a margin of error of 32%, a confidence level of 95%, and a population size of 106, the Raosoft
3 Sample Size Calculator recommended a sample of 9. A true and correct copy of the results from
4 the Raosoft Sample Size Calculator are attached as **Exhibit 6** (Raosoft Sample Size Calculator
5 results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically
6 reliable. *Id.*

7 19. **Mediation.** On July 24, 2025, following much of the foregoing informal discovery
8 and exchange of information, the Parties participated in a mediation session presided over by
9 Mediator Glenn E. Lerman, an experienced class action mediator. During the mediation, the
10 Parties had a full day of productive negotiations and reached agreement on a class-wide settlement
11 during the mediation session. During the mediation sessions, each side, represented by her/their
12 respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the
13 Action and all other matters covered by this Agreement pursuant to the terms and conditions of
14 this Agreement.

15 *Similar Actions*

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

24 *Uncashed Checks*

25 21. **Unclaimed Property Fund.** The Settlement provides for the disposition of
26 uncashed checks as follows: For any Class Member whose Individual Class Payment check or
27 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
28 shall transmit the funds represented by such checks to the California Controller's Unclaimed
Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
the requirements of California Code of Civil Procedure section 384, subd. (b). *Id.*, ¶ 4.4.3. In my
view, sending funds represented by uncashed checks to the Unclaimed Property Fund instead of



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1 a *cy pres* recipient is the best way to ensure that the Class Members and Aggrieved Employees
2 actually receive their portions of the Settlement.

3 ***Ascertainable and Numerous Class***

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

9 23. **Numerosity.** The Settlement Class has sufficiently numerous members to render
10 joinder impractical. No set number is required as a matter of law to maintain a class action. The
11 California Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that
12 there are approximately 106 Class Members for the Class Period of October 25, 2020 through
13 November 15, 2023. Plaintiff maintains that it would be impractical and economically inefficient
14 to require each Settlement Class Member to separately maintain an individual action or be joined
15 as a named plaintiff in this action. In light of these considerations, the Settlement Class'
16 membership is sufficiently numerous. Additionally, there are 66 Aggrieved Employees for the
17 PAGA Period of October 24, 2023 through November 15, 2023.

18 ***Predominant Common Questions***

19 24. A question of law or fact is common to the members of a class if it may be resolved
20 through common proof. In this case, there are many predominant common questions. Plaintiff
21 asserts all class members were subject to the same or similar operations and employment policies,
22 practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay
23 wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue
24 proper wage statements, failure to timely pay wages, and related labor law violations, all of which
25 Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff
26 asserts that common questions include, but are not limited to: (1) Whether Defendants failed to
27 pay all wages earned to class members for all hours worked at the correct rates of pay; (2) Whether
28 Defendants failed to provide the class with all meal and rest periods in compliance with California
law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they
failed to provide the class with one or more meal or rest periods in compliance with California
law; (4) Whether Defendants knowingly and intentionally failed to provide the class with accurate



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1 wage statements; (5) Whether Defendants willfully failed to provide the class with timely final
2 wages; and (6) Whether Defendants engaged in unfair competition within the meaning of
3 Business and Professions Code section 17200, *et seq.*, with respect to the class.

4 *Typicality*

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

12 *Adequacy*

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

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



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Background of Class Counsel

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

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

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

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

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

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

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



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1 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
2 1999.

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

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

17 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
18 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
19 Agent, followed by an award of Attorneys' fees and costs.

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

25 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.
26 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
27 first and only case to be successfully prosecuted through trial under the Labor Code Private
28 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



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1 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

o. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
BC511072 (appointed Class Counsel and granted final approval of class action settlement on



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1 behalf of bobtail truck drivers).

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

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

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

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

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

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

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

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

Class Action Treatment Is Superior

27 36. A class action is also superior to other means of adjudicating the issues in this
28 action. The predominance of common legal and factual questions shows that this Court could



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1 fairly adjudicate the claims of Class Members through a single class action. In view of the
2 *theoretical* alternatives that proposed class members could potentially utilize—representative
3 PAGA action (where there is less relief available), individual civil lawsuits or wage claims
4 through the Division of Labor Standards Enforcement (where there would be relatively little
5 money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
6 superior to all of them. Thus, this consideration supports conditional class action treatment for
7 purposes of this Settlement only.

8 *The Settlement is Presumptively Fair*

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

20 *Exposure & Risk Analysis*

21 38. At issue in this class and Private Attorneys General Act (“PAGA”) action is the
22 liability of hotel management and staffing companies to their approximately 106 hourly, non-
23 exempt California employees (hereafter the “Putative Class Members”) for their unpaid wages,
24 unprovided meal periods, unauthorized and unpermitted rest breaks, failure to provide accurate
25 and complete wage statements, failure to timely pay all earned and unpaid wages during and after
26 employment, unfair competition, and related violations of the Labor Code and applicable Wage
27 Order. Plaintiff prepared “damages” estimates in advance of the mediation. Plaintiff determined
28 Defendants’ maximum possible exposure for restitution and penalties to be approximately
\$2,247,878.87 (consisting of \$161,594.82 in unpaid wages, \$251,445.31 in missed meal period
premium wages, \$492,092.80 in missed rest break premium wages, \$37,400.00 for wage
statement penalties, \$392,001.12 for waiting time penalties, and \$914,350.00 for civil penalties



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1 under PAGA. True and correct copies of the spreadsheets I prepared for mediation of this Action
2 are collectively attached to this declaration as **Exhibit 7**.

3 39. The estimates are in essence “home run” projections that omit data points that will
4 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
5 involved in litigating this Action. Plaintiff calculated the damages based on the number of
6 workweeks and pay periods provided by Defendant, Plaintiff’s reports, and the sample data. *Id.*
7 Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix* campaign
8 and pursue individual release agreements from the Class Members. Plaintiff’s Counsel applied
9 discounts to the maximum possible exposure to account for all other risks discussed below. While
10 it is difficult to assign anything but crudely-determined percentages of risk to any of the claims,
11 it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such
12 employees is substantial and alone justifies a significant discount because Defendants would
likely by trial have gathered releases from the majority of the Class Members.⁷

13 40. My initial estimates do not realistically account for the risks outlined below or the
14 risk that a class will not be certified. Therefore, I believe a class settlement for \$170,000.00 is fair
and reasonable.

15 41. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff’s
16 recovery for unpaid wages would be extremely limited at best, largely because Defendants’
17 written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock
18 claims are difficult where a defendant requires in its written policies that all work must take place
19 while clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer
20 must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment
21 policies, Defendants mandate that employees must record all time worked accurately on their time
22 records and strictly prohibit employees from performing any work off-the-clock. Moreover, while

23 _____
24 ⁷ 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 Defendants dispute that off-the-clock work occurred, they contend that any time spent off the
2 clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal.
3 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de*
4 *minimis* defense even if compensable. (Stating that “We do not decide whether there are
5 circumstances where compensable time is so minute or irregular that it is unreasonable to expect
6 the time to be recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine
7 may apply here because the time spent off the clock were minute and insignificant. Accordingly,
8 a large award of penalties seems unlikely with respect to this claim.

9 42. The difficulty inherent in proving that off-the-clock work occurred poses a
10 significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove
11 this claim. Generally, a court will not certify a class unless it can determine an appropriate
12 classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here,
13 Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially
14 given the lack of records indicating when such off-the-clock work may have taken place.
15 Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine
16 if an individual in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there
17 is a significant risk that the Court would consider this evidentiary showing insufficient as a
18 classwide methodology. Defendants' employees signed attestations that they had been paid all
19 wages earned. The attestations are in English and Spanish. Defendants also presented evidence
20 that the quota of rooms the employees had to clean each day could be satisfied in the time the
21 employees were on the clock.

22 43. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff's
23 meal period claim. Defendants' employees signed attestations that they had received their meal
24 periods. Defendants also presented evidence that the quota of rooms the employees had to clean
25 each day could be satisfied without working during meal periods. Defendants contend that, to
26 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
27 was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
28 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard



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1 to the meal break claim is the reason that a particular employee may have failed to take a meal
2 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

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

11 45. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff’s rest
12 period claim. Defendants’ employees signed attestations that they had received their rest periods.
13 Defendants also presented evidence that the quota of rooms the employees had to clean each day
14 could be satisfied without working during rest breaks. Employers are not required to record rest
15 periods and such periods are paid. Defendants contend they provided non-exempt employees the
16 opportunity to take rest periods in accordance with California law. Further, Defendants’ written
17 policies on meal and rest periods are consistent with the Wage Order. Thus, unlike meal periods,
18 where there are often records showing whether an employee clocked out or not, there is no such
19 evidence to prove a missed rest period or that the employer refused to authorize and permit one.
20 *Id.* Managing such claims at trial has become exceedingly difficult. Plaintiff will depend on
21 sample witness testimony and surveys to prove the claims. While a victory with such evidence is
22 certainly possible, relevant caselaw makes such claims risky from a trial management and due
23 process perspective. *See Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining
24 “[I]f sufficient common questions exist to support class certification, it may be possible to manage
individual issues through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v.*
25 *Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

26 46. **Risks Associated with the Statutory Wage Statement Penalty Claims.** Plaintiff
27 also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties.
28 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



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1 statement claim has the same underlying risks as the above claims, as it is derivative of them. On
2 their face, the wage statements issued by Defendants comply with the requirements of Labor Code
3 section 226.

4 47. **Risks Associated with the Waiting Time Penalties Claims.** Without proof
5 willful behavior, Plaintiff will be unable to recover these penalties. Defendants' employees signed
6 attestations that they had been paid all wages earned. The attestations are in English and Spanish.
7 Defendants also presented evidence that the quota of rooms the employees had to clean each day
8 could be satisfied in the time the employees were on the clock.

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

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

27 50. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
28 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
counsel estimated a maximum possible exposure of approximately \$914,350.00 in civil penalties.
This estimate did not take into account any of the risks discussed above and assumed a violation
for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same



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1 pay period for the same alleged violations of different Labor Code provisions and derivative
2 violations. Although two federal district court decisions held that “stacking” PAGA penalties in
3 this fashion may be appropriate to determine the amount in controversy for purposes of removal
4 jurisdiction, Plaintiff’s counsel is not aware of any California state courts awarding plaintiffs
5 multiple PAGA penalties for the same violation for the same pay period under different Labor
6 Code provisions. This may be because the PAGA does not provide for what many employers
7 characterize as claim splitting and not merely stacking.

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

11 ⁸ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
12 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
13 \$18,695,692.58. In this regard, the district court stated,

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

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

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

⁹ 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 20**. 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**
21, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing



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52. 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 Defendants' meal period violations. A similar result could occur here.

53. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 106 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

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

55. Above, Plaintiff lists the maximum amounts recoverable in this action. However, based on the difficulties of proof, the Defendants' defenses, and the other attendant

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

- 3 a. Unpaid wages with interest in the amount of \$90,000.00;
4 b. Meal and rest period premium wages with interest in the amount of
5 \$225,000.00;
6 c. Statutory pay stub penalties in the amount of \$9,300.00;
7 d. Waiting time penalties in the amount of \$180,000.00; and
8 e. Civil penalties in the amount of \$63,000.00.

8 *Allocation of the PAGA Payment*

9 56. The settlement of PAGA penalties in the sum of \$20,000.00, of which 65%
10 (\$13,000.00) will be paid to the LWDA and 35% (\$7,000.00) will be distributed to the Aggrieved
11 Employees, is reasonable and appropriate under the circumstances. The Parties negotiated a good
12 faith amount for PAGA Penalties to be paid to the LWDA and to the Aggrieved Employees. The
13 portion to be paid to the LWDA was not the result of self-interest at the expense of other
14 Aggrieved Employees.

14 *Attorneys' Fees and Costs*

15 57. I intend to request Class Counsel Attorneys' Fees of \$56,666.67 (one-third of the
16 GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently
17 estimate to be approximately \$17,756.98 but Class Counsel will request no more than \$17,500.00
18 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing
19 this case these amounts are well within the range of reasonableness and thus warrant this Court's
20 preliminary approval. In addition, based on my experience in wage and hour class action matters,
21 fee awards of approximately one-third of the settlement fund are routinely approved as
22 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in
23 several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*,
24 *Marin County Superior Court*, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall,*
25 *Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund);
26 *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-
27 third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court,
28 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*



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1 *Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of
2 fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-
3 00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los
4 Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los
5 Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group,*
6 *Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC,*
7 U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund);
8 *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-
9 third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case
10 No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare
11 Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles
12 Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles
13 Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No.
14 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No.
15 BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No.
16 CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern
17 District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National*
18 *Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund);
19 *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No.
20 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/*
21 *Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No.
22 EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los
23 Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern*
24 *California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of
25 fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third of
26 fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679
27 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court,
28 Case No. CIVDS1500146 (one-third of fund).

58. The amount of fees and costs requested are commensurate with (1) the risk Class
Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case,
(3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved,



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

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

60. Attached as **Exhibit 8** is a true and correct copy of the contingency fee agreement between my firm and Plaintiff and the United Employees Law Group. Exhibit 8 explains how the attorneys' fees will be divided between Class Counsel.

Class Representative Service Payment

61. The Settlement provides that Plaintiff may seek a Class Representative Service Payment of \$5,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the risks she undertook on behalf of Class Members. Here, Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about her work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrant preliminary approval. Plaintiff Maria Jacqueline Batres's declaration, filed concurrently with mine, provides further information supporting her request for the Class Representative Service Payment.

62. Plaintiff began her investigation and retention of attorneys to pursue the claims at



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1 issue on approximately June of 2024. Awarding Plaintiff 2.94% of the GSA is entirely reasonable
2 given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In this case,
3 Plaintiff has devoted several hours of her time advancing the interests of the Class Members and
4 also expects to devote additional hours of her time with Class Counsel overseeing the
5 administration of the Settlement if the Court grants final approval of the Settlement. *See generally*
6 Declaration of Maria Jacqueline Batres. Plaintiff has done this by, among other things, retaining
7 experienced counsel, providing them with extensive information about her work history with
8 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
9 issue, assisting them in contacting absent Class Members to gather information, participating in
10 a full day of mediation, foregoing pursuit of her individual claims in favor of a fair class-wide
11 resolution, and being actively involved in the settlement process to ensure a fair result for the
12 Class Members as a whole.

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

28 64. 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



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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 9**.
- 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 10**.
- 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 11**.
- 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 12**.

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

65. As I explain further below, Plaintiff's individual share of the Net Settlement Amount will be less than that of some absent participating Class Members. Under the Settlement,



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1 participating Class Members will receive a *pro rata* distribution of the Settlement proceeds
2 proportionate to the period of time he or she worked for Defendants during the Class Period,
3 compared to the total of the total period of time worked by all participating Class Members during
4 the Class Period, as reflected by Defendants' records. Because Plaintiff may have been employed
5 for a shorter period during the Class Period, some Class Members will have worked more Work
6 Weeks than Plaintiff and, as a result, receive larger shares in the recovery – *even though they did*
7 *not actively participate in the lawsuit*. While this is a risk that Plaintiff assumed when she brought
8 her lawsuit, it is unfair to limit Plaintiff's Class Representative Service Payment to an amount not
9 much greater than an absent Class Members' share of the recovery. To encourage employees like
10 Plaintiff to don the helm of class champions (and thereby advance the important public policies
11 behind class actions), the Court should award something substantial to Plaintiff for her readiness
12 to receive less than absent Class Members while assuming all the risk and delay of payment.

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

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

28 68. Plaintiff faced the risk that she could face worsened career prospects for suing a
former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.
See generally Declaration of Maria Jacqueline Batres. Because she filed a lawsuit in the California
Superior Court, a public record now exists that Plaintiff sued her employer for Labor Code



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1 violations – a fact that won’t be lost on prospective employers considering her for a job. Common
2 sense dictates that an employer will think twice about hiring someone who sued her last employer.
3 Legal experts have recognized this fact. Attached to this declaration as **Exhibit 13** is a true and
4 correct copy of the article “Employees: Better Think Twice Before Suing Your Employer (Four
5 Reasons Why).” Attached to this declaration as **Exhibit 14** is a true and correct copy of the article
6 “What To Expect If You Sue Your Employer.” California even has laws to address this risk:
7 Labor Code § 1102.5 prohibits retaliation against employees who speak up about Labor Code
8 violations and Labor Code § 98.6 prohibits discrimination against employees who bring Labor
9 Code violations to the attention of the Labor Commissioner. Thus, the risk to Plaintiff’s future
10 employment shows that the Class Representative Service Payment sought is fair, adequate, and
reasonable, and warrants final approval of the Court.

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

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

22 71. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
23 were significant risks (outlined in the preliminary approval motion) to any award on behalf of the
24 Class Members and still Plaintiff achieved a settlement of \$170,000.00. This outstanding result
25 calls for significant awards to Plaintiff for making the result possible. If the Court is disinclined
26 to award Plaintiff all or part of the Class Representative Service Payment requested, Class
27 Counsel request that the Court allocate the difference to Plaintiff from Class Counsel’s requested
28 attorney fee award.

///



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Class Member and Aggrieved Employee Settlement Share Estimates

72. Above, Plaintiff estimates Plaintiff's anticipated Individual Class Payment.

73. **Individual Class Payments.** At \$17.88 per hour (the average Class Member's hourly wage), the average estimated Individual Class Payment to participating Class Members is the equivalent of over 31 hours of unpaid wages (the primary remedies sought) (\$555.03 /\$17.88 = 31.04 hours). Thus, this is a result the Class can be proud of in view of the significant risks.

74. Plaintiff estimates that there are 6,204 Work Weeks for the Class Period. So, each Work Week has a value of approximately \$9.48 (\$58,833.33 Net Settlement Amount / 6,204 Work Weeks = \$9.48). Plaintiff had 71 Work Weeks during the Class Period. Based on this, it is anticipated that Plaintiff Maria Jacqueline Batres will receive an Individual Class Payment of approximately \$673.30 as a participating Class Member (71 Work Week x \$9.48 = \$673.30) while the average estimated Individual Class Payment to participating Class Members will be approximately \$555.03. 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 \$1,507.74. 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 \$9.48. Some Class Members – those who worked more Work Weeks during the Class Period - will receive more, and some less.

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

76. **Individual PAGA Payments.** I estimate that the average Aggrieved Employee Individual PAGA Payment will be \$106.06. *Id.* Plaintiff's Individual PAGA Payment, her individual share of 35% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employee will receive a *pro rata* distribution of 35% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendants during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiff



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estimates that there are 66 Aggrieved Employees and 126 Aggrieved Employee paychecks for the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA Period has a value of approximately \$55.56 (35% of \$20,000.00 in PAGA Penalties / 126 Aggrieved Employee paychecks = \$55.56). It is anticipated that Plaintiff Maria Jacqueline Batres will receive an Individual PAGA Payment of approximately \$55.56 as an Aggrieved Employee (1 paycheck during the PAGA Period x \$55.56 paycheck value = \$55.56) while the average estimated Individual PAGA Payment to an Aggrieved Employee will be approximately \$106.06 (\$7,000.00, 35% of PAGA Penalties / 66 Aggrieved Employees during the PAGA Period = \$106.06 Individual PAGA Payment). Some Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive more, and some less. The highest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately \$111.12 (2 paychecks in the PAGA Period x \$55.56). The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately \$55.56.

Proposed Preliminary Approval Order

77. Plaintiff files a proposed Preliminary Approval Order with this declaration. The proposed Preliminary Approval Order includes the Notice Packet. The Notice Packet consists of the Class Notice (Exhibit A to the Settlement and the Preliminary Approval Order). Based on my investigation, the Class Members all understand English, Spanish or both. The Notice Packet does not include any other forms. The Settlement Agreement is not attached to the proposed Preliminary Approval Order. 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.

78. **Identity of Administrator.** 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.

79. **Requests for Exclusion Form.** Based on my investigation, the Class Members all understand English, Spanish or both. The proposed Class Notice provides that any request for exclusion shall be submitted to the Administrator rather than filed with the Court. The proposed Class Notice does not require the Class Member to send copies of the exclusion



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1 form to counsel, but requires the Administrator to do so. The proposed Preliminary Approval
2 Order provides that the Administrator shall file a declaration concurrently with the filing of
3 Plaintiff's motion for final approval with a copy of every exclusion form received by the
4 Administrator.

5 80. **Objections to the Settlement.** The proposed Class Notice provides that any
6 objection shall be submitted to the Administrator rather than filed with the Court. The
7 proposed Class Notice does not require the Class Member to send copies of the objection to
8 counsel, but requires the Administrator to do so. The proposed Preliminary Approval Order
9 provides that the Administrator shall file a declaration concurrently with the filing of the
10 motion for final approval with a copy of every objection form received by the administrator.

11 81. Neither the proposed Preliminary Approval Order nor the Class Notice require
12 an objecting party to, either personally or through counsel, appear at the hearing on the motion
13 for final approval for that party's objection to be considered. Neither the proposed Preliminary
14 Approval Order nor the Class Notice require an objecting party to, either personally or
15 through counsel, to file or serve, or to state in the objection, a notice of intention to appear at
16 the hearing on the motion for final approval.

17 82. **Final Approval Hearing Date.** The proposed Preliminary Approval Order
18 provides a proposed date for the Final Approval Hearing. The proposed Preliminary
19 Approval Order requires the Administrator to give notice to any objecting party of any
20 continuance of the hearing of the motion for final approval.

21 83. **No Injunction against Filing Claims.** Neither the proposed Preliminary
22 Approval Order nor the Class Notice purports to enjoin the Class Members from filing any
23 actions or administrative claims or proceedings pending the final hearing on the settlement,
24 or for any other period.

25 84. **No Claim Form.** The Settlement does not require a claim form.

26 *The Notice Packet*

27 85. The Settlement requires distribution of the Notice by First Class U.S. mail only.
28 Settlement, ¶ 8.4.2. Although there are current employee Class Members, it is uncertain whether
Defendants' records of their contact information include email addresses and Class Members,
who perform all of their work away from a desk, are not in a position to check their emails. As
such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as
Exhibit A to the Settlement) provides Class Members with all pertinent information that they need



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1 to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly
2 and concisely explains, among other things: (1) what the Settlement is about; (2) who is a
3 Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion
4 request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the
5 Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the
6 disputes will be resolved; and (9) the estimated settlement shares for each Class Member.
7 Additionally, the Notice will include the number of eligible Work Weeks a Class Member had
8 during the Class Period. Accordingly, the Notice should be approved because it describes the
9 Settlement with sufficient clarity and specificity to explain to Class Members what this action is
10 about, their rights under the Settlement, and how to exercise those rights. As such, the Parties'
11 proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will
12 allow Class Members to make informed responses to the proposed settlement.

13 86. The Settlement does not require Class Members to submit claims to
14 participate.

15 87. Each document in the Notice Packet is drafted in a manner that is likely to be
16 readily understood by the members of the Class. The Notice Packet does not contain any
17 Latin terms, legal terms of art, or unfamiliar symbols or abbreviations.

18 88. As stated above, the Class Notice includes an estimate of the likely recovery
19 by the individual Class Member. It also provides the estimated dollar value of a Work Week
20 and the estimated dollar value of a Pay Period.

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

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

91. The Class Notice describes the releases by Plaintiff and the Class Members.

92. The lawsuit includes claim for civil penalties under PAGA. The Class Notice
defines PAGA. It states that Class Members may not opt out of the PAGA provisions of the
Settlement. The Class Notice also describes the terms of the settlement of the PAGA claim,



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1 including who is an Aggrieved Employee. The Class Notice provides an estimate of the
2 individual Aggrieved Employee's share of 35% of the PAGA Penalties and advises
3 Aggrieved Employees that the payments will be reported on a Form 1099.

4 93. The Objection form instructs the objecting Class Member that the objection
5 must be delivered to the Administrator. The Objection form states the name and address of
6 the Administrator. It also states the date by which the objection must be mailed or otherwise
7 delivered.

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

12 95. The Election Not To Participate form (i) instructs the Class Member seeking
13 exclusion that the exclusion form must be mailed or delivered to the Administrator, (ii) states
14 the name and address of the Administrator, and (iii) states the date by which the exclusion
15 form must be mailed or otherwise delivered.

16 96. The information required to be provided by a Class Member on the Election
17 Not To Participate form does not exceed the minimum information necessary to (i) identify
18 the person as a Class Member and (ii) contact the person to clarify any uncertainties.

19 97. The Election Not To Participate form indicates that exclusion from the Class
20 Settlement will not result in exclusion from the PAGA portion of the Settlement.

21 *Administrator Duties*

22 98. The duties of the Settlement Administrator are spelled out in the Settlement and in
23 the bid provided by Phoenix Class Action Administration a true and correct copy of which is
24 attached hereto as **Exhibit 15**.

25 *Administration Costs*

26 99. With regard to the settlement administration costs provision (Settlement § 3.2.3),
27 it is reasonable. Before agreeing to Phoenix Class Action Administration the Parties sought and
28 reviewed bids from other reputable third-party administrators: (A) Phoenix Class Action
Administration = \$6,500.00; (B) ILYM = \$6,950.00; (C) CPT Group = \$8,500.00; and (D)
Simpluris = \$8,920.00. A true and correct copy of the bid from ILYM is attached hereto as
Exhibit 16. A true and correct copy of the bid from CPT is attached hereto as **Exhibit 17**. A true
and correct copy of the bid from Simpluris is attached hereto as **Exhibit 18**. The bid provided by



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Phoenix Class Action Administration was the lowest. Thus, the settlement administration costs provision should be given preliminary approval.

PAGA Provisions of the Settlement

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

101. The Settlement provides that 35% of the PAGA Penalties shall be distributed among all Aggrieved Employees, even those who opt out of the Class Settlement. See Settlement, ¶ 3.2.5.

102. The Settlement states as follows with regard to the release of the PAGA claim: Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California, releases Released Parties from all claims and/or theories of liability for civil penalties under PAGA that have been or could have been asserted in any of the pleadings that have been filed in the Action based the facts and theories alleged therein and in the PAGA Notice including, but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, the relevant Wage Orders issued by the Industrial Welfare Commission, claims for attorneys' fees and costs, and derivative claims for civil penalties. Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. *Id.*, ¶ 6.3.

103. The PAGA Release is limited to the Defendants named in the Operative Complaint, together with G&B Hotel Employee Leasing, LLC, Dimension Hospitality, LLC, RT Pasad LLC, and each of its/their past, present, and future parents, subsidiaries, divisions, and/or affiliated companies and entities, and each of its/their former and present officers, directors, shareholders, owners, members, managers, managing agents, employees, attorneys, insurers, predecessors, successors, and assigns. See Settlement, ¶ 1.4.2 ("Released Parties").

104. The Settlement releases all claims and/or theories of liability for civil penalties under PAGA that have been or could have been asserted in any of the pleadings that have been filed in the Action based the facts and theories alleged therein and in the notice sent by the plaintiff to the LWDA. The Settlement states: Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California, releases Released Parties from all claims and/or theories of liability for civil penalties under PAGA that have been or could have been asserted in any of the pleadings that have been filed in the Action based the facts and theories alleged therein and



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1 in the PAGA Notice including, but not limited to, Labor Code sections 201, 201.3, 202, 203, 204,
2 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, the relevant Wage
3 Orders issued by the Industrial Welfare Commission, claims for attorneys' fees and costs, and
4 derivative claims for civil penalties. Plaintiff does not release the claim for wages or damages of
5 any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. *Id.*,
6 ¶ 6.3.

7 *Notice of Settlement to the LWDA*

8 105. Pursuant to Labor Code § 2699(l)(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 19**.

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 Tuesday, May 5, 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)

2 david@spivaklaw.com

3 THE SPIVAK LAW FIRM

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4 Telephone: (213) 725-9094

5 Facsimile: (213) 634-2485

6 Attorneys for Plaintiff(s),

MARIA JACQUELINE BATRES, and all others similarly situated

7 (Additional attorneys for parties on following page)

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

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

16 *Plaintiff(s),*

17 vs.

18 DIMENSION DEVELOPMENT COMPANY,
19 INC., a Louisiana corporation; DR HOTEL
20 EMPLOYEE LEASING LLC, a Delaware
21 limited liability company; DIMENSION
22 DEVELOPMENT TWO, LLC, a Louisiana
23 limited liability company; and DOES 1–50,
24 inclusive,

25 *Defendant(s).*

Case No. 24STCV28018

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

Action filed: October 25, 2024

Dept: SSC-9, Hon. Elaine Lu

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1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Maria Jacqueline Batres (“Plaintiff”) and defendants Dimension Development
3 Company, Inc., DR Hotel Employee Leasing, LLC, and Dimension Development Two, LLC
4 (collectively “Defendants”). The Agreement refers to Plaintiff 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 “*Maria Jacqueline Batres v. Dimension Development Company, Inc., et*
8 *al.*, Case No. 24STCV28018 initiated on October 25, 2024 and pending in Superior Court of the
State of California, County of Los Angeles.

9 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the
10 Parties have agreed to appoint to administer the Settlement.

11 1.3. “Administration Expenses Payment” means the amount the Administrator will be
12 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
13 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
14 with approval of the Settlement.

15 1.4. “Aggrieved Employee” means a current or former non-exempt or hourly paid
16 employee who worked for Defendants at the Courtyard Pasadena hotel located at 180 N. Fair
Oaks Avenue, Pasadena, CA 91103, at any time during the PAGA Period.

17 1.5. “Class” means all current and former non-exempt or hourly paid employees who
18 worked for Defendants at the Courtyard Pasadena hotel located at 180 N. Fair Oaks Avenue,
19 Pasadena, CA 91103, at any time during the Class Period.

20 1.6. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm and Walter
21 L. Haines of United Employees Law Group.

22 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
23 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
expenses, respectively, incurred to prosecute the Action.

24 1.8. “Class Data” means Class Member identifying information in Defendants’
25 possession including the Class Member’s name, last-known mailing address, Social Security
26 number, and number of Class Period Workweeks and PAGA Pay Periods.

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

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

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

1.12. “Class Period” means the period from October 25, 2020 through November 15, 2023.

1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

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

1.15. “Court” means the Superior Court of California, County of Los Angeles.

1.16. “Defendants” means named Defendants Dimension Development Company, Inc., DR Hotel Employee Leasing, LLC, and Dimension Development Two, LLC.

1.17. “Defense Counsel” means Shareef S. Farag and Nicholas D. Poper of Baker & Hostetler LLP.

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 Order” 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 C**.

1.22. "Gross Settlement Amount" means One Hundred Seventy Thousand Dollars and Zero Cents (\$170,000.00) which is the total amount Defendants agree to pay, can ever be required to pay, or can ever cause to be paid 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 Workweeks worked during the Class Period.

1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 35% of the PAGA Penalties calculated according to the number of PAGA Pay Periods 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 65% 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. "PAGA Pay Period" means any pay period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.

1.31. "PAGA Period" means the period from October 24, 2023 through November 15, 2023.

1.32. "PAGA" means the California Private Attorneys General Act (Labor Code section 2698 *et seq.*).

1.33. "PAGA Notice" means Plaintiff's October 24, 2024 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a), and any amendments thereto.

1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 35% to the Aggrieved Employees (\$7,000.00) and the 65% to LWDA (\$13,000.00) in settlement of PAGA claims.

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

1.36. "Plaintiff" means Maria Jacqueline Batres, the named plaintiff in the Action.

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

1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is attached as **Exhibit B**.

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

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

1.41. "Released Parties" means: Defendants Dimension Development Company, Inc., DR Hotel Employee Leasing, LLC, and Dimension Development Two, LLC, G&B Hotel Employee Leasing, LLC, Dimension Hospitality, LLC, RT Pasad LLC, and each of its/their past, present, and future parents, subsidiaries, divisions, and/or affiliated companies and entities, and each of its/their former and present officers, directors, shareholders, owners, members, managers, managing agents, employees, attorneys, insurers, predecessors, successors, and assigns.

1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. "Response Deadline" means sixty (60) days after the Administrator mails Notice

1 to Class Members and Aggrieved Employees and shall be the last date on which Class Members
2 may: (a) fax, email, or mail a Request for Exclusion from the Class Settlement, or (b) fax, email,
3 or mail his or her objection to the Class Settlement. Class Members to whom Class Notices are
4 resent after having been returned undeliverable to the Administrator shall have an additional
fourteen (14) calendar days beyond the Response Deadline has expired.

5 1.44. "Settlement" means the disposition of the Action effected by this Agreement and
6 the Judgment.

7 1.45. "Workweek" means any week during which a Class Member worked for
8 Defendants for at least one day during the Class Period.

9 **2. RECITALS.**

10 2.1. On October 25, 2024, Plaintiff commenced this Action by filing a Complaint
11 alleging causes of action against Defendants for failure to pay wages, failure to provide meal
12 periods, failure to authorize and permit rest periods, failure to issue proper wage statements,
13 failure to timely pay wages, and related claims. On December 30, 2024, Plaintiff filed a First
14 Amended Complaint alleging causes of action against Defendants for failure to pay wages, failure
15 to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage
16 statements, failure to timely pay wages, and related claims. The First Amended Complaint is the
17 operative complaint in the Action (the "Operative Complaint.") Defendants deny the allegations
in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative
Complaint and deny any and all liability for the causes of action alleged.

18 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
19 notice to Defendants and the LWDA by sending the PAGA Notice.

20 2.3. On July 24, 2025, the Parties participated in an all-day mediation presided over
21 by Glenn E. Lerman, Esq. which led to this Agreement to settle the Action.

22 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of
23 Class Members and Aggrieved Employees, the number of Workweeks, the number of PAGA Pay
24 Periods, average rates of pay, timekeeping and payroll data for all Class Members, written
25 policies, and related information. Plaintiff's investigation was sufficient to satisfy the criteria for
26 court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and
Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

27 2.5. The Court has not granted class certification.
28

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay One Hundred Seventy Thousand Dollars and Zero Cents (\$170,000.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 and 1/3%, which is currently estimated to be \$56,666.67 and a Class Counsel Litigation Expenses Payment of not more than \$17,500.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for

1 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
2 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
3 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
4 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
5 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
6 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
7 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
8 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
9 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
10 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
11 division or sharing of any of these Payments.

12 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
13 \$12,000.00 except for a showing of good cause and as approved by the Court. To the extent the
14 Administration Expenses are less or the Court approves payment less than \$12,000.00, the
15 Administrator will retain the remainder in the Net Settlement Amount.

16 3.2.4. To Each Participating Class Member: An Individual Class Payment
17 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
18 by all Participating Class Members during the Class Period and (b) multiplying the result by each
19 Participating Class Member's Workweeks.

20 3.2.4.1. Tax Allocation of Individual Class Payments. 10.00% of
21 each Participating Class Member's Individual Class Payment will be allocated to settlement of
22 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
23 reported on an IRS W-2 Form. The 90.00% of each Participating Class Member's Individual
24 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
25 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
26 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
27 employee taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 65% (\$13,000.00) allocated to the LWDA PAGA Payment and 35% (\$7,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties \$7,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and PAGA Pay Periods. Based on a review of records to date, Defendants estimate there are 106 Class Members who collectively worked a total of approximately 6,204 Workweeks, and 66 Aggrieved Employees who worked a total of approximately 126 PAGA Pay Periods.

4.2. Class Data. Not later than 15 days after the Order granting Preliminary Approval of the Settlement is entered and served, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which 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.

4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll

1 taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
2 The Administrator shall calculate Defendants' share of payroll taxes and provide the calculations
3 to Defense Counsel no later than 5 days after the Effective Date.

4 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants
5 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
6 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
7 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
8 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
9 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
10 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
11 Payments.

12 4.4.1. The Administrator will issue checks for the Individual Class Payments
13 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
14 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
15 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
16 not cashed by the void date. The Administrator will send checks for Individual Settlement
17 Payments to all Participating Class Members (including those for whom the Class Notice was
18 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
19 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
20 Employees (including those for whom the Class Notice was returned undelivered). The
21 Administrator may send Participating Class Members a single check combining the Individual
22 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
23 must update the recipients' mailing addresses using the National Change of Address Database.

24 4.4.2. The Administrator must conduct a Class Member Address Search for all
25 other Class Members whose checks are returned undelivered without USPS forwarding address.
26 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
27 forwarding address provided or to an address ascertained through the Class Member Address
28 Search. The Administrator need not take further steps to deliver checks to Class Members whose
re-mailed checks are returned as undelivered. The Administrator shall promptly send a
replacement check to any Class Member whose original check was lost or misplaced, requested

1 by the Class Member prior to the void date.

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

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

11 **5. [OMITTED]**

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

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

1 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
2 notwithstanding such different or additional facts or Plaintiff's discovery of them.

3 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
4 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
5 and benefits, if any, of Section 1542 of the California Civil Code, which reads:

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

10 6.2 Release by Participating Class Members: All Participating Class Members, on
11 behalf of themselves and their respective former and present representatives, agents, attorneys,
12 heirs, administrators, successors, and assigns, release Released Parties from all claims and/or
13 theories of liability that have been or could have been asserted in any of the pleadings that have
14 been filed in the Action Operative Complaint based the facts and theories alleged therein and in
15 the PAGA Notice including, but not limited to, claims for unpaid and/or underpaid minimum
16 wages, overtime, and/or double time, failure to provide compliant meal breaks, failure to provide
17 compliant rest breaks, failure to pay meal and/or rest break premiums at the regular rate of pay,
18 failure to timely pay all wages owed during and/or upon separation of employment, failure to
19 provide accurate itemized wage statements, failure to maintain accurate employment records,
20 unfair competition under California Business & Professions Code section 17200 *et. seq.* The
21 release shall include release of California Labor Code sections 201, 201.3, 202, 203, 204, 210,
22 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, the relevant Wage
23 Orders issued by the Industrial Welfare Commission, claims for attorneys' fees and costs, and
24 derivative claims for statutory penalties. Except as set forth in Section 6.3 of this Agreement,
25 Participating Class Members do not release any other claims, including claims for vested benefits,
26 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
27 insurance, disability, social security, workers' compensation, or claims based on facts occurring
28

1 outside the Class Period.

2 6.3 Release by Aggrieved Employees. Plaintiff, on behalf of herself, the Aggrieved
3 Employees, and the State of California, releases Released Parties from all claims and/or theories
4 of liability for civil penalties under PAGA that have been or could have been asserted in any of
5 the pleadings that have been filed in the Action based the facts and theories alleged therein and
6 in the PAGA Notice including, but not limited to, Labor Code sections 201, 201.3, 202, 203, 204,
7 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, the relevant Wage
8 Orders issued by the Industrial Welfare Commission, claims for attorneys' fees and costs, and
9 derivative claims for civil penalties. Plaintiff does not release the claim for wages or damages of
10 any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

11 **7. MOTION FOR PRELIMINARY APPROVAL.** Plaintiff agrees to prepare and file a
12 motion for preliminary approval ("Motion for Preliminary Approval") that complies with the
13 Court's current checklist for Preliminary Approvals. A proposed Preliminary Approval Order is
14 attached as Exhibit B.

15 7.1 Defendants' Declaration in Support of Preliminary Approval. Within ten (10)
16 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel
17 a signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any
18 actual or potential conflicts of interest with the Administrator. In their Declarations, Defense
19 Counsel and Defendants shall aver that they are not aware of any other pending matter or action
20 asserting claims that will be extinguished or adversely affected by the Settlement.

21 7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
22 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
23 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
24 of the Settlement under *Dunk/Kullar*; (ii) a draft proposed Order Granting Preliminary Approval
25 and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration
26 from the Administrator attaching its "not to exceed" bid for administering the Settlement and
27 attesting to its willingness to serve; competency; operative procedures for protecting the security
28

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

16 7.3 Responsibilities of Counsel. Class Counsel shall be responsible for expeditiously
17 finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full
18 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
19 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval.
20 Class Counsel is responsible for delivering the Court's Preliminary Approval to the
21 Administrator.

22 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
23 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
24 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
25 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
26 Preliminary Approval or conditions Preliminary Approval on any material change to this
27 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
28

1 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
2 otherwise satisfy the Court's concerns.

3 **8. SETTLEMENT ADMINISTRATION.**

4 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement
5 Administrators to serve as the Administrator and verified that, as a condition of appointment,
6 Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a
7 fiduciary, all duties specified in this Agreement in exchange for payment of Administration
8 Expenses. The Parties and their Counsel represent that they have no interest or relationship,
9 financial or otherwise, with the Administrator other than a professional relationship arising out of
10 prior experiences administering settlements.

11 8.2 Employer Identification Number. The Administrator shall have and use its own
12 Employer Identification Number for purposes of calculating payroll tax withholdings and
13 providing reports state and federal tax authorities.

14 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
15 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
16 Regulation section 468B-1.

17 8.4 Notice to Class Members.

18 8.4.1 No later than three (3) business days after receipt of the Class Data, the
19 Administrator shall notify Class Counsel that the list has been received and state the number of
20 Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

21 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
22 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
23 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice
24 with Spanish translation, if applicable, substantially in the form attached to this Agreement as
25 Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any
26 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and
27 the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts.
28

1 Before mailing Class Notices, the Administrator shall update Class Member addresses using the
2 National Change of Address database.

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

10 8.4.4 The deadlines for Class Members' written objections, challenges to
11 Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional
12 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
13 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
14 with the re-mailed Class Notice.

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

23 8.5 Requests for Exclusion (Opt-Outs).

24 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
25 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
26 Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional
27 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
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1 from a Class Member or his/her representative that reasonably communicates the Class Member's
2 election to be excluded from the Settlement and includes the Class Member's name, address and
3 email address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
4 emailed, or postmarked by the Response Deadline.

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

14 8.5.3 Every Class Member who does not submit a timely and valid Request for
15 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
16 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
17 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
18 Participating Class Member actually receives the Class Notice or objects to the Settlement.

19 8.5.4 Every Class Member who submits a valid and timely Request for
20 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
21 or have the right to object to the class action components of the Settlement. Non-Participating
22 Class Members who are Aggrieved Employees are deemed to release the claims identified in
23 Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

24 8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days
25 after the Administrator mails the Class Notice (plus an additional 14 days for Class Members
26 whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay
27 Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute.
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1 The Class Member may challenge the allocation by communicating with the Administrator via
2 fax, email or mail. The Administrator must encourage the challenging Class Member to submit
3 supporting documentation. In the absence of any contrary documentation, the Administrator is
4 entitled to presume that the Workweeks contained in the Class Notice are correct so long as they
5 are consistent with the Class Data. The Administrator's determination of each Class Member's
6 allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise
7 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
8 calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and
9 the Administrator's determination the challenges.

10 8.7 Objections to Settlement.

11 8.7.1 Only Participating Class Members may object to the class action
12 components of the Settlement and/or this Agreement, including contesting the fairness of the
13 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
14 Litigation Expenses Payment and/or Class Representative Service Payment.

15 8.7.2 Participating Class Members may send written objections to the
16 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
17 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
18 Hearing. A Participating Class Member who elects to send a written objection to the
19 Administrator must do so not later than 60 days after the Administrator's mailing of the Class
20 Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

21 8.7.3 Non-Participating Class Members have no right to object to any of the class
22 action components of the Settlement.

23 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
24 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

25 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
26 establish and maintain and use an internet website to post information of interest to Class
27 Members including the date, time and location for the Final Approval Hearing and copies of the
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1 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
2 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
3 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
4 Approval Order and the Judgment. The Administrator will also maintain and monitor an email
5 address and a toll-free telephone number to receive Class Member calls, faxes and emails.

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

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

22 8.8.4 Workweek and/or PAGA Pay Period Challenges. The Administrator has
23 the authority to address and make final decisions consistent with the terms of this Agreement on
24 all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The
25 Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

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

9 8.8.6 Final Report by Administrator. Within 10 days after the Administrator
10 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
11 and Defense Counsel with a final report detailing its disbursements by employee identification
12 number only of all payments made under this Agreement. At least 15 days before any deadline
13 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
14 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
15 payments required under this Agreement. Class Counsel is responsible for filing the
16 Administrator's declaration in Court.

17 **9. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.** Based on a review
18 of Defendants' records to date, Defendants estimate there are 106 Class Members who
19 collectively worked a total of 6,204 workweeks. If the total Workweeks worked by Class
20 Members during the Class Period exceeds 6,204 by more than ten percent (10%) as of the date
21 the Court grants preliminary approval of the settlement (i.e., more than 6,824 Workweeks), then
22 the Gross Settlement Amount, inclusive of the Class Counsel Fees Payment, the Class
23 Representative Service Payment, the PAGA Penalties allocation, and the Individual Class
24 Payments, will increase proportionally according to the number of additional Workweeks over
25 ten percent (10%) (for example, if the number of Workweeks increases by 11% then the Gross
26 Settlement Amount will be increased by 1%).

1 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
2 Exclusion identified in the Exclusion List exceeds eight (8%) 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 shall be void ab initio, have no force or effect
5 whatsoever, and that neither Party will have any further obligation to perform under this
6 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
7 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the
8 Court of election to withdraw not later than 7 days after the Administrator sends the final
9 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 not later
15 than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
16 will 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 does not grant Final Approval or conditions Final
23 Approval on any material change to the Settlement (including, but not limited to, the scope of
24 release to be granted by Class Members and/or Aggrieved Employees), the Parties will
25 expeditiously work together in good faith to address the Court's concerns by revising the
26 Agreement as necessary to obtain Final Approval. The Court's decision to award less than the
27 amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment,
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1 Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not
2 constitute a material modification to the Agreement within the meaning of this paragraph.

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

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

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

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.

13. ADDITIONAL PROVISIONS.

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

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

1 (5) unless such disclosure is required, as determined by a Party's counsel, by applicable law,
2 regulation, or contractual, stock exchange, investor, potential investor, or similar audit or
3 reporting requirements.

4 Each Party agrees to immediately notify each other Party of any judicial or agency order,
5 inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense
6 Counsel separately agree not to, directly or indirectly, initiate any conversation or other
7 communication, before the filing of the Motion for Preliminary Approval, any with third party
8 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
9 "the matter was resolved," or words to that effect. No information about the Action or the
10 settlement may be posted on Class Counsel's website(s) without Defendants' prior written
11 consent. Defendants consent to Class Counsel listing the case name, number, and a short
12 description of the claims in declarations filed in court listing their prior cases to provide their
13 qualifications to be appointed as class counsel. This paragraph does not restrict Class Counsel's
14 communications with Class Members in accordance with Class Counsel's ethical obligations
15 owed to Class Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To Defendant:
Shareef S. Farag
Nicholas D. Poper
BAKER & HOSTETLER LLP
1900 Avenue of the Stars, Suite 2700
Los Angeles, CA 90067-4301
sfarag@bakerlaw.com
npoper@bakerlaw.com

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

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

Dated: _____

By: _____
MARIA JACQUELINE BATRES

Dated: 2/18/2026

By: 

GREG FRIEDMAN
On Behalf Of DIMENSION
DEVELOPMENT COMPANY, INC.,
DR HOTEL EMPLOYEE LEASING,

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LLC, and DIMENSION
DEVELOPMENT TWO, LLC

THE SPIVAK LAW FIRM

Dated: 02 / 05 / 2026

By: 
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, MARIA JACQUELINE
BATRES, and all others similarly
situated

UNITED EMPLOYEES LAW GROUP

Dated: _____

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, MARIA JACQUELINE
BATRES, and all others similarly
situated

BAKER & HOSTETLER LLP

Dated: _____

By: _____
SHAREEF S. FARAG, Attorneys for
Defendant(s), DIMENSION
DEVELOPMENT COMPANY, INC.,
DR HOTEL EMPLOYEE LEASING,
LLC, and DIMENSION
DEVELOPMENT TWO, LLC

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LLC, and DIMENSION
DEVELOPMENT TWO, LLC

THE SPIVAK LAW FIRM

Dated: _____

By: _____
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, MARIA JACQUELINE
BATRES, and all others similarly
situated

UNITED EMPLOYEES LAW GROUP

Dated: February 5, 2026

By:  _____
WALTER L. HAINES, Attorneys for
Plaintiff, MARIA JACQUELINE
BATRES, and all others similarly
situated

BAKER & HOSTETLER LLP

Dated: February 17, 2026

By:  _____
SHAREEF S. FARAG, Attorneys for
Defendant(s), DIMENSION
DEVELOPMENT COMPANY, INC.,
DR HOTEL EMPLOYEE LEASING,
LLC, and DIMENSION
DEVELOPMENT TWO, LLC

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EXHIBIT A

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

(case name: *Maria Jacqueline Batres, et al. v. Dimension Development Company, Inc., et al.*
and number 24STCV28018)

***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 Dimension Development Company, Inc., DR Hotel Employee Leasing, LLC, and Dimension Development Two, LLC (collectively “Defendants”) for alleged violations of California’s labor laws. The Action was filed by Maria Jacqueline Batres (“Plaintiff”), a former employee of Defendant DR Hotel Employee Leasing, LLC, and seeks payment of (1) wages and other relief for a class of all current and former non-exempt or hourly paid employees who worked for Defendants at the Courtyard Pasadena hotel located at 180 N. Fair Oaks Avenue, Pasadena, CA 91103, at any time during the Class Period (October 25, 2020 through November 15, 2023) (“Class Members”); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all current and former non-exempt or hourly paid employees who worked for Defendants at the Courtyard Pasadena hotel located at 180 N. Fair Oaks Avenue, Pasadena, CA 91103, at any time during the PAGA Period (October 24, 2023 through November 15, 2023) (“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 Workweek is <<\$increment type value>> and a PAGA Pay Period is <<@PayPeriodValue>>. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to an Aggrieved Employee is estimated to be <<\$Average Individual PAGA Payment Amount>>.

The above estimates are based on Defendants’ records showing that **you worked <<__>> Workweeks** during the Class Period and **you worked <<__>> PAGA Pay Periods** during the PAGA Period. If you believe that you worked more Workweeks and/or PAGA Pay Periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

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

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against 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. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
The Opt-out Deadline is <<RESPONSE DEADLINE>>	

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	You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims.
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 Class Settlement. 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 Workweek / PAGA Pay Periods Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and Individual PAGA Payment (if any) depends on how many Workweeks you worked at least one day during the Class Period and how many PAGA Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Workweeks and PAGA Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice.
1. WHAT IS THE ACTION ABOUT? Plaintiff is a former employee of Defendant DR Hotel Employee Leasing LLC and alleges that she was jointly employed by Defendants. The Action accuses Defendants of violating California labor laws based on the alleged failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, and related violations of the California Labor Code and Wage Orders. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group (“Class Counsel.”)	
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1 Defendants strongly deny violating any laws or failing to pay any wages and contend they
2 complied with all applicable laws.

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

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

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

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

20 A. Gross Settlement Amount. Defendants will pay \$170,000.00 as the Gross
21 Settlement Amount. Defendants have agreed to deposit the Gross Settlement Amount into an
22 account controlled by the Administrator of the Settlement. The Administrator will use the Gross
23 Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class
24 Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the
25 Administrator’s expenses, and penalties to be paid to the California Labor and Workforce
26 Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will
27 fund the Gross Settlement Amount not more than 14 days after the Judgment entered by the Court
28 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.

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

25 1. Attorney Fees and Costs. Up to \$56,666.67 (33 and 1/3% of the Gross
26 Settlement to Class Counsel for attorneys’ fees and up to \$17,500.00 for their litigation expenses.
27 To date, Class Counsel have worked and incurred expenses on the Action without payment.

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

3 3. Administration Expenses. Up to \$12,000.00 to the Administrator for
4 services administering the Settlement.

5 4. PAGA Penalties. Up to \$20,000.00 for PAGA Penalties, allocated 65% to
6 the LWDA PAGA Payment and 35% in Individual PAGA Payments to the Aggrieved Employees
7 based on their PAGA Pay Periods.

8 Participating Class Members have the right to object to any of these deductions except the
9 PAGA penalties. The Court will consider all objections.

10 Based on records, Defendants estimated that, as of the date of the Settlement, (1) there
11 are 106 Class Members and 6,204 total Workweeks during the Class Period and (2) there are 66
12 Aggrieved Employees who worked 126 PAGA Pay Periods during the PAGA Period.

13 C. Net Settlement Distributed to Class Members. After making the above deductions
14 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
15 Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
16 Members based on their Class Period Workweeks.

17 D. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
18 the Court to approve an allocation of 10.00% of each Individual Class Payment to taxable wages
19 ("Wage Portion") and 90.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion
20 is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately
21 pay employer payroll taxes they owe on the Wage Portion of Individual Class Payments. The
22 Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The
23 Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the
24 Individual Class Payments on IRS 1099 Forms.

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

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

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

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

11 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
12 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
13 Individual PAGA Payments and will release the Released Parties from civil penalties from the
14 Released PAGA Claims (defined below).

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

20 H. Administrator. The Court has appointed a neutral company, Phoenix Settlement
21 Administrators (the "Administrator") to send this Notice, calculate and make payments, and
22 process Class Members' Requests for Exclusion. The Administrator will also decide Class
23 Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and
24 perform other tasks necessary to administer the Settlement. The Administrator's contact
25 information is contained in Section 9 of this Notice.

26 I. Participating Class Members' Release. After the Judgment is final and Defendants
27 have fully funded the Gross Settlement (and separately paid all employer payroll taxes),
28 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
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 and/or theories
of liability that have been or could have been asserted in any of the pleadings that
have been filed in the Action based the facts and theories alleged therein and in
the PAGA Notice including, but not limited to, claims for unpaid and/or underpaid

1 minimum wages, overtime, and/or double time, failure to provide compliant meal
2 breaks, failure to provide compliant rest breaks, failure to pay meal and/or rest
3 break premiums at the regular rate of pay, failure to timely pay all wages owed
4 during and/or upon separation of employment, failure to provide accurate itemized
5 wage statements, failure to maintain accurate employment records, unfair
6 competition under California Business & Professions Code section 17200 *et. seq.*
7 The release shall include release of California Labor Code sections 201, 201.3,
8 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197,
9 1197.1, 1198, the relevant Wage Orders issued by the Industrial Welfare
Commission, claims for attorneys' fees and costs, and derivative claims for
statutory penalties. Except as set forth in Section 6.3 of the 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.

10 J. The PAGA Release. After the Court's judgment is final, and Defendants have paid
11 the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff releases all
12 claims for civil penalties that could have been sought by the Labor Commissioner for the
13 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.

14 The Aggrieved Employees will be bound by the following release:

15 Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of
16 California, releases Released Parties from all claims and/or theories of liability
17 for civil penalties under PAGA that have been or could have been asserted in any
18 of the pleadings that have been filed in the Action based the facts and theories
19 alleged therein and in the PAGA Notice including, but not limited to, Labor Code
20 sections 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
21 1174.5, 1194, 1197, 1197.1, 1198, the relevant Wage Orders issued by the
Industrial Welfare Commission, claims for attorneys' fees and costs, and
derivative claims for civil penalties. Plaintiff does not release the claim for wages
or damages of any Aggrieved Employee unless such Aggrieved Employee is a
Participating Class Member.

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

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

26 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
27 Payments by (a) dividing \$7,000.00 by the total number of PAGA Pay Periods worked by all
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1 Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked
2 by each individual Aggrieved Employee.

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

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

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

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

16 B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a
17 single Individual PAGA Payment check to every Aggrieved Employee even if they opt out of the
18 Class Settlement (i.e., every Non-Participating Class Member).

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

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

22 Email, fax, or mail a written and signed letter with your name, present address, telephone
23 number, and a simple statement that you do not want to participate in the Settlement. The
24 Administrator will exclude you based on any writing communicating your request be excluded.
Be sure to personally sign your request, identify the Action as *Maria Jacqueline Batres vs.*
25 *Dimension Development Company, Inc., et al.*, Case No. 24STCV28018, and include your
26 identifying information (full name, address, telephone number, approximate dates of
employment, and social security number for verification purposes). You must make the request
27 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**

1 **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
2 are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

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

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

15 A Participating Class Member who disagrees with any aspect of the Settlement, the Motion for
16 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
17 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
18 Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the
19 Administrator is <<RESPONSE DEADLINE>>**. Be sure to tell the Administrator what you
20 object to, why you object, and any facts that support your objection. Make sure you identify the
21 Action, *Maria Jacqueline Batres vs. Dimension Development Company, Inc., et al.*, case no.
22 24STCV28018, and include your name, current address, telephone number, and approximate
23 dates of employment for Defendants and sign the objection. Section 9 of this Notice has the
24 Administrator's contact information. You should send your objection to the Administrator by
25 email, fax, or send by regular U.S. mail.

26 Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at
27 your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready
28 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.

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

2 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
3 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department SSC-9 of the Los
4 Angeles Superior Court, located at Spring Street Courthouse, 312 North Spring Street, Los
5 Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the
6 Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and
7 the Administrator. The Court will invite comment from objectors, Class Counsel and Defense
8 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
9 or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>

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

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<ADMINISTRATOR'S WEBSITE>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. 24STCV28018. You can also make an appointment to personally review court documents in the Clerk's Office at the Spring Street Courthouse by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

Class Counsel:

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

Administrator:

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

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

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

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

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

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

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

Plaintiff(s),

vs.

DIMENSION DEVELOPMENT COMPANY, INC., a Louisiana corporation; DR HOTEL EMPLOYEE LEASING LLC, a Delaware limited liability company; DIMENSION DEVELOPMENT TWO, LLC, a Louisiana limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 24STCV28018

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: October 25, 2024
Dept: SSC-9, Hon. Elaine Lu

1 The Motion of Plaintiff Maria Jacqueline Batres (hereafter referred to as “Plaintiff”) for
2 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
3 Hon. Elaine Lu presiding. The Court having considered the Motion, the Class Action and PAGA
4 Settlement Agreement (“Agreement”), and supporting papers, HEREBY ORDERS THE
5 FOLLOWING:

6 1. The Court grants preliminary approval of the settlement based upon the terms set
7 forth in the Agreement filed as an Exhibit to the Motion. The Court has determined on a
8 preliminary basis that the proposed settlement appears to be fair, adequate, and reasonable. The
9 final determination of those issues will be made at the Final Approval Hearing.

10 2. This Order incorporates by reference the definitions in the Agreement, and all
11 terms herein shall have the same meaning as defined in the Agreement.

12 3. For settlement purposes only, the Court conditionally certifies the following
13 Class: all current and former non-exempt or hourly paid employees who worked for Defendants
14 at the Courtyard Pasadena hotel located at 180 N. Fair Oaks Avenue, Pasadena, CA 91103, at
15 any time during the Class Period.

16 4. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiff are typical of the claims of the Class; (d) the Plaintiff will
22 fairly and adequately protect the interests of the members of the Class; (e) a class action is
23 superior to other available methods for the efficient adjudication of this controversy; and (f)
24 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
25 representative of the Class.

26 5. The Gross Settlement Amount that Defendants shall pay is One Hundred Seventy
27 Thousand Dollars and Zero Cents (\$170,000.00). The Court preliminarily finds that the
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1 settlement appears to be within the range of reasonableness of a settlement that could ultimately
2 be given final approval by this Court. The Court has reviewed the monetary recovery that is
3 being granted as part of the settlement and preliminarily finds that the monetary settlement
4 awards made available to the Class are fair, adequate, and reasonable when balanced against the
5 probable outcome of further litigation and the significant risks relating to certification, liability,
6 and damages issues.

7 6. The Court appoints, for settlement purposes only, David Glenn Spivak of The
8 Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel and
9 preliminarily approves Class Counsel's request for attorneys' fees and costs.

10 7. The Court appoints, for settlement purposes only, Maria Jacqueline Batres as the
11 Class Representative and preliminarily approves Plaintiff's Class Representative Service
12 Payment.

13 8. The Court appoints Phoenix Class Action Administration as the Administrator
14 and preliminarily approves the Administrator's estimated Administration Expenses Payment.

15 9. The Court approves, as to form and content, the Class Notice in substantially the
16 form attached as Exhibit A to this Order. The Court finds on a preliminary basis that the plan for
17 distribution of the Class Notice satisfies due process, provides the best notice practicable under
18 the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.
19 The Court orders the mailing of the Class Notice by first class mail pursuant to the terms set forth
20 in the Agreement.

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

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

9 12. Using best efforts to perform as soon as possible, and in no event later than 14
10 days after receiving the Class Data, the Administrator will send to all Class Members identified
11 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice
12 with Spanish translation, if applicable substantially in the forms attached to this order as **Exhibit**
13 **A**.

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

21 14. All written objections, challenges to Workweeks and/or PAGA Pay Periods, and
22 Requests for Exclusions must be faxed, emailed, or postmarked not later than 60 days after the
23 date of mailing of the Class Notice. The deadline will be extended an additional 14 days beyond
24 the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-
25 mailed. Alternatively, Participating Class Members may appear at the Final Approval Hearing to
26 make verbal objections.
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1 15. Any Class Member who chooses to opt out of and be excluded from the Class
2 shall not receive an Individual Class Payment or have the right to object to the class action
3 components of the Settlement. Any Class Member who does not submit a timely and valid
4 Request for Exclusion shall be bound by all determinations of the Court, the Agreement and the
5 Judgment, regardless whether the Participating Class Member actually receives the Class Notice
6 or objects to the Settlement.

7 16. A Final Approval Hearing shall be held on ____ at _____.m. in Department SSC-9
8 of the Superior Court for the State of California, County of Los Angeles, located at the Spring
9 Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012 to consider the fairness,
10 adequacy and reasonableness of the proposed Settlement preliminarily approved by this
11 Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees
12 and costs and the Class Representative Service Payment to the Class Representative. The notice
13 of motion and all briefs and materials in support of the motion for final approval of class action
14 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
15 Court on or before _____. Plaintiff's counsel must give notice to any objecting party of any
16 continuance of the hearing of the motion for final approval.

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

22 18. To facilitate administration of the settlement pending final approval, the Court
23 hereby enjoins all Class Members from filing or prosecuting any claims, suits, or administrative
24 proceedings (including, but not limited to, filing claims with the Division of Labor Standards
25 Enforcement of the California Department of Industrial Relations) regarding claims released by
26 the Settlement unless and until such Class Members have filed valid Requests for Exclusion with
27
28

1 the Administrator and the time for filing valid Requests for Exclusion with the Administrator has
2 elapsed. This provision shall not apply to claims not alleged in the Action.

3 19. The Court expressly reserves the right to adjourn or continue the Final Approval
4 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
5 prompt notice of any continuance to Class Members who object to the Settlement.
6

7 **IT IS SO ORDERED.**
8
9

10 **DATE**

HON. ELAINE LU
JUDGE OF THE SUPERIOR COURT

EXHIBIT C

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10 Attorneys for Plaintiff(s),

11 MARIA JACQUELINE BATRES, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 **(UNLIMITED JURISDICTION)**

15 MARIA JACQUELINE BATRES, on behalf of
16 herself and all others similarly situated, and the
17 general public, and as an “aggrieved employee”
18 on behalf of other “aggrieved employees” and the
State of California under the Labor Code Private
Attorneys General Act of 2004,

19 *Plaintiff,*

20 vs.

21
22 DIMENSION DEVELOPMENT COMPANY,
INC., a Louisiana corporation; DR HOTEL
23 EMPLOYEE LEASING LLC, a Delaware
limited liability company; DIMENSION
24 DEVELOPMENT TWO, LLC, a Louisiana
limited liability company; and DOES 1–50,
25 inclusive,

26 *Defendants.*

Case No. 24STCV28018

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

Action filed: October 25, 2024

Dept: SSC-9, Hon. Elaine Lu



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1 This matter came on for hearing on _____, 2026 at ____m. in Department SSC-9 of the
2 above-captioned court on Plaintiff's Motion for Final Approval of a Class Action and PAGA
3 Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Class Action and
4 PAGA Settlement Agreement and Class Notice (the "Settlement") filed herewith which provides
5 for a Gross Settlement Amount ("GSA") of up to \$170,000.00 in compromise of all disputed
6 claims on behalf of during the period of October 25, 2020 to November 15, 2023 ("Class Period").
7 All capitalized terms used herein shall have the same meaning as defined in the Settlement.

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

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 _____, 2026, the Class Notice was sent to each Class
19 Member by First Class U.S. mail. The Class Notice informed Class Members of the terms of the
20 Settlement, their right to receive their proportional share of the Settlement, their right to request
21 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
22 person or by counsel at the final approval hearing and be heard regarding final approval of the
23 Settlement. Adequate periods of time were provided by each of these procedures. No member of
24 the Settlement Class presented written objections to the proposed Settlement as part of this notice
25 process, stated an intention to appear, or actually appeared at the final approval hearing.

26 2. For purposes of this Final Order and Judgment and pursuant to the Settlement, the
27 "Class" means all current and former non-exempt or hourly paid employees who worked for
28 Defendants at the Courtyard Pasadena hotel located at 180 N. Fair Oaks Avenue, Pasadena, CA
91103, at any time during the period of October 25, 2020 to November 15, 2023 ("Class Period").
"Class Member" or "Settlement Class Member" means a member of the Class, as either a
Participating Class Member or Non-Participating Class Member (including a Non- Participating



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1 Class Member who qualifies as an Aggrieved Employee). “Participating Class Member” means a
2 Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
3 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by
4 sending the Administrator a valid and timely Request for Exclusion. “Aggrieved Employee”
5 means a person employed by Defendants in California and classified as an hourly, non-exempt
6 employee who worked for Defendants during the period of October 24, 2023 to November 15,
2023 (“PAGA Period”).

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

12 4. Plaintiff’s Release. Plaintiff and her respective former and present spouses,
13 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
14 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
15 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
16 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
17 that were, or reasonably could have been, alleged based on facts contained in the Operative
18 Complaint, Plaintiff’s PAGA Notice, or ascertained during the Action and released under 6.3,
19 below. (“Plaintiff’s Release.”) Plaintiff’s Release does not extend to any claims or actions to
20 enforce this Settlement, or to any claims for vested benefits, unemployment benefits, disability
21 benefits, social security benefits, workers’ compensation benefits that arose at any time, or based
22 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
23 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
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.

24 5. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542. For
25 purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions, rights,
26 and benefits, if any, of Section 1542 of the California Civil Code, which reads:

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



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with the debtor or released party.

6. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties¹ from all claims and/or theories of liability that have been or could have been asserted in any of the pleadings that have been filed in the Action Operative Complaint based the facts and theories alleged therein and in the PAGA Notice including, but not limited to, claims for unpaid and/or underpaid minimum wages, overtime, and/or double time, failure to provide compliant meal breaks, failure to provide compliant rest breaks, failure to pay meal and/or rest break premiums at the regular rate of pay, failure to timely pay all wages owed during and/or upon separation of employment, failure to provide accurate itemized wage statements, failure to maintain accurate employment records, unfair competition under California Business & Professions Code section 17200 *et. seq.* The release shall include release of California Labor Code sections 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, the relevant Wage Orders issued by the Industrial Welfare Commission, claims for attorneys' fees and costs, and derivative claims for statutory penalties. Except as set forth in Section 6.3 of the Settlement, 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.

7. Release by Aggrieved Employees. Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California, releases Released Parties from all claims and/or theories of liability for civil penalties under PAGA that have been or could have been asserted in any of the pleadings that have been filed in the Action based the facts and theories alleged therein and in the PAGA Notice including, but not limited to, Labor Code sections 201, 201.3, 202, 203, 204,

¹ Pursuant to the Settlement, "Released Parties" means Defendants Dimension Development Company, Inc., DR Hotel Employee Leasing, LLC, and Dimension Development Two, LLC, G&B Hotel Employee Leasing, LLC, Dimension Hospitality, LLC, RT Pasad LLC, and each of its/their past, present, and future parents, subsidiaries, divisions, and/or affiliated companies and entities, and each of its/their former and present officers, directors, shareholders, owners, members, managers, managing agents, employees, attorneys, insurers, predecessors, successors, and assigns.



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210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, the relevant Wage Orders issued by the Industrial Welfare Commission, claims for attorneys' fees and costs, and derivative claims for civil penalties. Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

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

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

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

a. Class Counsel Fees Payment of _____ (not to exceed \$56,666.67) in attorneys' fees and Class Counsel Litigation Expenses Payment of _____ (not to exceed \$17,500.00) in litigation costs to Class Counsel;



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b. Class Representative Service Payment of _____ (not to exceed \$5,000.00) payable to Plaintiff Maria Jacqueline Batres for her service as a Class Representative;

c. Administration Expenses Payment of _____ (not to exceed \$12,000.00) in costs payable to Phoenix Class Action Administration for its services as the Administrator; and

d. LWDA PAGA Payment of \$13,000.00 (65% of the \$20,000.00 PAGA Penalties) to the LWDA.

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

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

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

14. Pursuant to CCP 384 and the Settlement, Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Individual Class Payment check and/or Individual PAGA Payment check. After the expiration of the 180-day period, on Defendants' behalf, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

15. Nothing in this Final Order and Judgment shall preclude any action to enforce the



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Parties' obligations under the Settlement or hereunder, including the requirement that Defendants deposit funds for distribution by the Administrator to Class Members in accordance with the Settlement.

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

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

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

19. 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 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, 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 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.

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

IT IS SO ORDERED, ADJUDGED AND DECREED.



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DATE

**HON. ELAINE LU
JUDGE OF THE SUPERIOR COURT**

La presente Acción de Grupo y Acuerdo de Conciliación PAGA (“Acuerdo”) se realiza entre la demandante Maria Jacqueline Batres (“Demandante”) y los demandados Dimension Development Company, Inc., DR Hotel Employee Leasing, LLC y Dimension Development Two, LLC (colectivamente “Demandados”). El Acuerdo se refiere a la Demandante y a los Demandados colectivamente como “Partes” o individualmente como “Parte”.

1. DEFINICIONES.

1.1. “Acción” se refiere a la demanda por la Demandante por presuntas violaciones de salarios y horas de trabajo contra los Demandados, titulada “*Maria Jacqueline Batres v Dimension Development Company, Inc., et al.*”, Caso No. 24STCV28018 iniciada el 25 de octubre de 2024 y pendiente en el Tribunal Superior del Estado de California, Condado de Los Angeles.

1.2. “Administrador” se refiere a Phoenix Settlement Administrators, la entidad neutral que las Partes han acordado designar para administrar el Acuerdo.

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

1.4. “Empleado agraviado” se refiere a un empleado actual o anterior no exento o remunerado por horas que haya trabajado para los Demandados en el hotel Courtyard Pasadena, ubicado en 180 N. Fair Oaks Avenue, Pasadena, CA 91103, en cualquier momento durante el Período PAGA.

1.5. “Grupo” se refiere a todos los empleados actuales y anteriores no exentos o pagados por hora que trabajaron para los Demandados en el hotel Courtyard Pasadena ubicado en 180 N. Fair Oaks Avenue, Pasadena, CA 91103, en cualquier momento durante el Período del Grupo.

1.6. “Abogado del Grupo” se refiere a David Glenn Spivak de The Spivak Law Firm y Walter L. Haines de United Employees Law Group.

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

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

1 Período del Grupo y Períodos de Pago de PAGA.

2 1.9. “Miembro del Grupo” o “Miembro del Grupo del Acuerdo” se refiere a un
3 miembro del Grupo, ya sea como Miembro del Grupo Participante o Miembro del Grupo No
4 Participante (incluido un Miembro del Grupo no participante que reúna los requisitos para ser
considerado Empleado Agraviado).

5 1.10. “Búsqueda de direcciones de miembros del grupo” se refiere a la investigación y
6 búsqueda por parte del Administrador de las direcciones postales actuales de los Miembros del
7 grupo utilizando todas las fuentes, métodos y medios razonablemente disponibles, incluidos, entre
8 otros, la base de datos nacional de cambios de dirección, la localización de personas y el contacto
directo del Administrador con los Miembros del grupo.

9 1.11. “Aviso a los miembros del grupo” se refiere al AVISO APROBADO POR EL
10 TRIBUNAL SOBRE EL ACUERDO DE LA ACCIÓN DE GRUPO Y LA FECHA DE LA
11 AUDIENCIA PARA LA APROBACIÓN FINAL DEL TRIBUNAL, que se enviará por correo a
12 los Miembros del Grupo en inglés con una traducción al español en el formulario, sin variación
sustanciales, adjunto como Anexo A y está incorporado como referencia a este Acuerdo.

13 1.12. “Período del grupo” se refiere al período comprendido entre el 25 de octubre de
14 2020 y el 15 de noviembre de 2023.

15 1.13. “Representante del Grupo” se refiere a la Demandante nombrada en la demanda
16 operativa en la Acción que solicita la aprobación del Tribunal para actuar como Representante
del Grupo.

17 1.14. “Pago de Servicio de la Representante del Grupo” se refiere al pago que se le hace
18 a la Representante del Grupo por iniciar la Acción y proporcionar servicios en apoyo de la Acción.

19 1.15. “Tribunal” se refiere al Tribunal Superior de California, Condado de Los Angeles.

20 1.16. “Demandados” se refiere a los Demandados nombrados Dimension Development
Company, Inc., DR Hotel Employee Leasing, LLC y Dimension Development Two, LLC.

21 1.17. “Abogado de la Defensa” se refiere a Shareef S. Farag y Nicholas D. Poper de
22 Baker & Hostetler LLP.

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

1 aviso de apelación contra la sentencia; o si se presenta una apelación oportuna contra la Sentencia,
2 el día siguientes a la confirmación de la sentencia por parte del Tribunal de apelaciones y la
3 emisión de una remisión.

4 1.19. “Orden de aprobación final” se refiere a la orden del Tribunal que otorga la
5 aprobación final del Acuerdo.

6 1.20. “Audiencia de Aprobación Final” se refiere a la audiencia del Tribunal sobre la
7 Moción de Aprobación Final del Acuerdo.

8 1.21. “Sentencia Definitiva” se refiere a la Sentencia Dictada por el Tribunal al Otorgar
9 la Aprobación Final del Acuerdo. Se adjunta un formulario de Sentencia Final propuesta como
10 **Anexo C.**

11 1.22. “Monto Bruto del Acuerdo” se refiere a Ciento Setenta Mil Dólares y Cero
12 Centavos (\$170,000.00), que es el monto total que los Demandados acuerdan pagar, se les puede
13 exigir que paguen o puedan hacer que se paguen en virtud del Acuerdo, excepto según lo dispuesto
14 en el Párrafo 9 más adelante. El Monto Bruto del Acuerdo se utilizará para pagar los Pagos
15 Individuales del Grupo, los Pagos Individuales de PAGA, el Pago de LWDA a PAGA, los
16 Honorarios del Abogado del Grupo, los Gastos del Abogado del Grupo, el Pago del Servicio del
17 Representante del Grupo y los Gastos del Administrador.

18 1.23. “Pago Individual del Grupo” se refiere a la parte prorrateada del Miembro del
19 Grupo Participante del Monto Neto del Acuerdo calculado de acuerdo con la cantidad de semanas
20 laborales trabajadas durante el Período del Grupo.

21 1.24. “Pago individual PAGA” se refiere a la parte prorrateada del Empleado agraviado
22 del 35% de las Sanciones de PAGA calculadas de acuerdo con la cantidad de Períodos de pago
23 PAGA trabajados durante el Período PAGA.

24 1.25. “Sentencia” se refiere a la sentencia dictada por el Tribunal basada en la
25 Aprobación Final.

26 1.26. “LWDA” se refiere a la Agencia de Desarrollo Laboral y de la Fuerza Laboral de
27 California, la agencia autorizada, según la sección 2699, inciso (i) del Código Laboral.

28 1.27. “Pago a la LWDA en concepto de PAGA” se refiere al 65% de las sanciones de
PAGA pagadas a la LWDA según la sección 2699, inciso (i) del Código Laboral.

1.28. “Monto Neto del Acuerdo” se refiere al Monto Bruto del Acuerdo, menos los
siguientes pagos en los montos aprobados por el Tribunal: Pagos individuales PAGA, el Pago a
la LWDA en concepto de PAGA, el Pago por los Servicios de la Representante del Grupo, el
Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de Litigios del Abogado del Grupo

1 y el Pago de los Gastos de Administración. El resto se pagará a los Miembros del Grupo
2 Participantes como Pagos Individuales del Grupo.

3 1.29. “Miembro del Grupo No Participante” se refiere a cualquier Miembro del Grupo
4 que opte por no participar en el Acuerdo enviando al Administrador una Solicitud de Exclusión
válida y oportuna.

5 1.30. “Período de pago de PAGA” se refiere a cualquier período de pago durante el cual
6 un Empleado agraviado haya trabajado para los Demandados durante al menos un día durante el
Período PAGA.

7 1.31. “Período PAGA” se refiere al período comprendido entre el 24 de octubre de 2023
8 y el 15 de noviembre de 2023.

9 1.32. “PAGA” se refiere a la Ley de Abogados Generales Privados de California
10 (Código Laboral, sección 2698 *et seq.*).

11 1.33. “Aviso de PAGA” se refiere a la carta enviada por la Demandante el 24 de octubre
12 de 2024 a los Demandados y a la LWDA en la que se les notifica, de conformidad con la sección
2699.3, inciso (a) del Código Laboral y cualquier enmienda a dicho aviso.

13 1.34. “Sanciones de PAGA” se refiere al monto total de las Sanciones civiles de PAGA
14 que se pagarán del Monto Bruto del Acuerdo, asignado el 35% a los Empleados Agraviados
15 (\$7,000.00) y el 65% a la LWDA (\$13,000.00) en concepto de liquidación de las reclamaciones
PAGA.

16 1.35. “Miembro del Grupo Participante” se refiere a un Miembro del Grupo que no
17 presenta una Solicitud de Exclusión válida y oportuna del Acuerdo.

18 1.36. “Demandante” se refiere a Maria Jacqueline Batres, la demandante nombrada en
19 la Acción.

20 1.37. “Aprobación Preliminar” se refiere a la Orden del Tribunal que otorga la
Aprobación Preliminar del Acuerdo.

21 1.38. “Orden de Aprobación Preliminar” se refiere a la Orden propuesta que otorga la
22 aprobación preliminar y la aprobación del Acuerdo de PAGA. Se adjunta un formulario de
23 propuesta de Orden de Aprobación Preliminar como **Anexo B**.

24 1.39. “Reclamaciones del grupo exoneradas” se refiere a las reclamaciones que se
exoneran tal y como se describe en el Párrafo 6.2 más adelante.

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

1.41. “Partes exoneradas” se refiere a: los Demandados Dimension Development Company, Inc., DR Hotel Employee Leasing, LLC, y Dimension Development Two, LLC, G&B Hotel Employee Leasing, LLC, Dimension Hospitality, LLC, RT Pasad LLC, y cada una de sus empresas matrices, subsidiarias, divisiones y/o empresas afiliadas pasadas, presentes y futuras, y cada uno de sus anteriores y presentes funcionarios, directores, accionistas, propietarios, miembros, gerentes, agentes gerentes administrativos, empleados, abogados, aseguradoras, predecesores, sucesores y cesionarios.

1.42. “Solicitud de exclusión” se refiere a la presentación por parte de un Miembro del Grupo de una solicitud por escrito para ser excluido del Acuerdo del Grupo firmada por el Miembro del Grupo.

1.43. “Fecha límite de respuesta” se refiere a los sesenta (60) días después de que el Administrador envíe por correo el Aviso a los Miembros del Grupo y a los Empleados Agraviados y será la última fecha en la que los Miembros del Grupo podrán: (a) enviar por fax, correo electrónico o correo postal una Solicitud de Exclusión del Acuerdo del Grupo, o (b) enviar por fax, correo electrónico o correo postal su objeción al Acuerdo del Grupo de Demandantes. Los Miembros del Grupo a quienes se les reenvíen los Avisos del Grupo después de haber sido devueltos sin poder entregarse al Administrador tendrán catorce (14) días de calendario adicionales después de que haya vencido la fecha límite de Respuesta.

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

1.45. “Semana laboral” se refiere a cualquier semana durante la cual un Miembro del Grupo trabajó para los Demandados por lo menos un día durante el Período del Grupo.

2. CONSIDERANDOS.

2.1. El 25 de octubre de 2024, la Demandante inició esta Acción presentando una Demanda en la que alegaba causas de acción contra los Demandados por no pagar los salarios, no proporcionar períodos de comida, no autorizar ni permitir períodos de descanso, no emitir las nóminas salariales adecuadas, no pagar los salarios a tiempo y otras reclamaciones relacionadas. El 30 de diciembre de 2024, la Demandante presentó una Primera Demanda Enmendada alegando causas de acción contra los Demandados por no pagar los salarios, no proporcionar períodos de comida, no autorizar ni permitir períodos de descanso, no emitir nóminas salariales adecuadas, no pagar los salarios a tiempo y otras reclamaciones relacionadas. La Primera Demanda

Enmendada es la demanda operativa en la Acción (la “Demanda Operativa”). Los demandados niegan las alegaciones en la Demanda Operativa, niegan cualquier incumplimiento de las leyes identificadas en la Demanda Operativa y niegan toda responsabilidad por las causas de acción alegadas.

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

2.3. El 24 de julio de 2025, las Partes participaron en una mediación de todo el día presidida por Glenn E. Lerman, Esq. que dio lugar al presente Acuerdo para resolver la Acción.

2.4. Antes de la mediación, la Demandante obtuvo, a través de una revelación de pruebas, el número de Miembros del Grupo y Empleados Agraviados, el número de semanas laborales, el número de Periodos de Pago de PAGA, las tasas promedio de pago, los datos de control de horarios y nóminas de todos los Miembros del Grupo, las políticas escritas y la información relacionada. La investigación de la Demandante fue suficiente para satisfacer los criterios para la aprobación judicial establecidos en *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 y *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

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

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

3. TÉRMINOS MONETARIOS.

3.1. Monto Bruto del Acuerdo. Salvo que se disponga lo contrario en el Párrafo 9 más adelante, los Demandados se comprometen a pagar ciento setenta mil dólares y cero centavos (\$170,000.00) y nada más como Monto Bruto del Acuerdo, y a pagar por separado todos y cada uno de los impuestos sobre la nómina que se adeuden sobre las Partes salariales de los Pagos Individuales del Grupo. Los Demandados no tienen la obligación de pagar el Monto Bruto del Acuerdo (ni ningún impuesto sobre la nómina) antes de la fecha límite indicada en el Párrafo 6.1 del presente Acuerdo. El Administrador desembolsará la totalidad del Monto Bruto del Acuerdo sin pedir ni exigir a los Miembros del Grupo Participantes ni a los Empleados Agraviados que presenten ninguna reclamación como condición para el pago. Ninguna parte del Monto Bruto del Acuerdo se devolverá a los Demandados.

3.2. Pagos con cargo al Monto Bruto del Acuerdo. El Administrador realizará y

deducirá los siguientes pagos con cargo al Monto Bruto del Acuerdo, en los montos especificados por el Tribunal en la Aprobación Final:

3.2.1. A la Demandante: Pago por Servicios prestados como Representante del Grupo a la Representante del Grupo un monto de no más de \$5,000.00 (además de cualquier Pago Individual del Grupo y cualquier Pago Individual PAGA al que tenga derecho la Representante del Grupo como Miembro del Grupo Participante). Los Demandados no se opondrán a la solicitud de la Demandante de un Pago por Servicios prestados como Representante del Grupo que no exceda este monto. Como parte de la moción para el Pago de Honorarios del Abogado del Grupo y el Pago de los Gastos del Litigio del Grupo, la Demandante solicitará la aprobación del Tribunal para cualquier Pago por Servicios prestados como Representante del Grupo a más tardar 16 días hábiles antes de la Audiencia de Aprobación Final. Si el Tribunal aprueba un Pago por Servicios de Representante del Grupo inferior al monto solicitado, el Administrador retendrá el resto en el Monto Neto del Acuerdo. El Administrador pagará el Pago por Servicios del Representante del Grupo utilizando el Formulario 1099 del IRS. La Demandante asume toda la responsabilidad por los impuestos laborales adeudados sobre el Pago por Servicios del Representante del Grupo.

3.2.2. Al Abogado del Grupo: Un Pago por Honorarios del Abogado del Grupo de no más del 33 y 1/3%, que actualmente se estima en \$56,666.67 y un Pago por Gastos de Litigio del Abogado del Grupo de no más de \$17,500.00. Los Demandados no se opondrán a las solicitudes de estos pagos siempre que no excedan estos montos. La Demandante y/o el Abogado del Grupo presentarán una moción para el Pago de los Honorarios del Abogado del Grupo y el Pago por Gastos de Litigio del Grupo a más tardar 16 días hábiles antes de la Audiencia de Aprobación Final. Si el Tribunal aprueba un Pago de Honorarios del Abogado del Grupo y/o un Pago por Gastos de Litigio del Abogado del Grupo inferior a los montos solicitados, el Administrador asignará el resto al Monto Neto del Acuerdo. Las Partes exoneradas no tendrán ninguna responsabilidad ante el Abogado del Grupo o cualquier otro Abogado de la Demandante que surja de cualquier reclamación sobre cualquier parte del Pago de Honorarios del Abogado del Grupo y/o Pago por los Gastos del Litigio del Abogado del Grupo. El Administrador pagará el Pago de Honorarios del Abogado del Grupo y el Pago por los Gastos del Abogado del Grupo utilizando uno o varios Formularios 1099 del IRS. El Abogado del Grupo asume toda la responsabilidad y la obligación de los impuestos adeudados sobre el Pago de los Honorarios del Abogado del Grupo y el Pago por los Gastos de Litigio del Abogado del Grupo y exime a los Demandados de toda responsabilidad e indemniza a los Demandados de cualquier disputa o controversia relacionada con la división o el reparto de cualquiera de estos Pagos.

3.2.3. Al Administrador: Un pago por gastos del administrador que no excederá los \$12,000.00, excepto que se demuestre una causa justificada y lo apruebe el Tribunal. En la medida en que los Gastos de Administración sean inferiores o el Tribunal apruebe un pago inferior a \$12,000.00, el Administrador retendrá el resto en el Monto Neto del Acuerdo.

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

3.2.4.1. Asignación de impuestos de los pagos individuales del grupo. El 10.00% del Pago Individual del Grupo de cada Miembro del Grupo Participante se asignará a la liquidación de las reclamaciones salariales (la “Porción Salarial”). Las porciones salariales están sujetas a retención de impuestos y se declararán en un formulario W-2 del IRS. El 90.00% del Pago Individual del Grupo de cada Miembro del Grupo Participante se asignará a la liquidación de reclamaciones por intereses y sanciones (la “Porción No Salarial”). Las porciones no salariales no están sujetas a retenciones salariales y se declararán en los formularios 1099 del IRS. Los Miembros del Grupo Participantes asumen toda la responsabilidad por los impuestos laborales adeudados sobre el Pago Individual del Grupo.

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

3.2.5. A la LWDA y a los Empleados Agraviados: Las sanciones de PAGA por un monto de \$20,000.00 que se pagarán con cargo al Monto Bruto del Acuerdo, con el 65% (\$13,000.00) asignado al Pago de la LWDA en concepto de PAGA y el 35% (\$7,000.00) asignado a los Pagos Individuales en concepto de PAGA.

3.2.5.1. El Administrador calculará cada Pago Individual PAGA (a) dividiendo el monto de la participación correspondiente a los Empleados Afectados (35% de las sanciones PAGA, \$7,000.00) entre el número total de Períodos de Pago de PAGA trabajados por todos los Empleados Agraviados durante el Período de PAGA y (b) multiplicando el resultado por los Períodos de Pago de PAGA de cada Empleado Agraviado. Los Empleados Agraviados asumen toda la responsabilidad y obligación por los impuestos adeudados sobre el Pago Individual de PAGA.

3.2.5.2. Si el Tribunal aprueba las Sanciones de PAGA inferiores al

1 monto solicitado, el Administrador asignará el resto al Monto Neto del Acuerdo. El
2 Administrador informará de los pagos individuales de PAGA en los formularios 1099 del IRS.

3 **4. FINANCIACIÓN DEL ACUERDO Y PAGOS.**

4 4.1. Semanas laborales del Grupo y períodos de pago de PAGA. Según una revisión
5 de los registros hasta la fecha, los Demandados estiman que hay 106 Miembros del Grupo que
6 trabajaron colectivamente un total de aproximadamente 6,204 semanas laborales y 66 Empleados
7 agraviados que trabajaron un total de aproximadamente 126 Períodos de pago de PAGA.

8 4.2. Datos del Grupo. En un plazo máximo de 15 días después de la emisión y
9 notificación de la Orden que otorga la Aprobación Preliminar del Acuerdo, los Demandados
10 entregarán simultáneamente los Datos del Grupo al Administrador, en un formato de hoja de
11 cálculo de Microsoft Excel. Para proteger los derechos de privacidad de los Miembros del Grupo,
12 el Administrador deberá mantener la confidencialidad de los Datos del Grupo, usar los Datos del
13 Grupo únicamente para los fines de este Acuerdo y para ningún otro propósito, y restringir el
14 acceso a los Datos del Grupo a los empleados del Administrador que necesitan acceso a los Datos
15 del Grupo para efectuar y cumplir el presente Acuerdo. Los Demandados tienen la obligación
16 continua de notificar inmediatamente al Abogado del Grupo si descubren que los Datos del Grupo
17 omitieron información de identificación de los miembros del grupo y de proporcionar los Datos
18 del Grupo corregidos o actualizados tan pronto como sea razonablemente posible. Sin ninguna
19 extensión del plazo en el que los Demandados deben enviar los Datos del Grupo al Administrador,
20 las Partes y sus abogados harán todo lo posible, de buena fe, para reconstruir o resolver cualquier
21 problema relacionado con los Datos del Grupo faltantes u omitidos.

22 4.3. Financiación del Monto Bruto del Acuerdo. Los Demandados financiarán
23 completamente el Monto Bruto del Acuerdo y también financiarán los montos necesarios para
24 pagar completamente la parte de les corresponde de los impuestos sobre las nóminas, transfiriendo
25 los fondos al Administrador en un plazo máximo de 14 días después de la Fecha de Entrada en
26 Vigor. El Administrador calculará la participación que les corresponde a los Demandados de los
27 impuestos sobre la nómina y proporcionará los cálculos al Abogado de la Defensa en un plazo
28 máximo de 5 días después de la Fecha de Entrada en Vigor.

4.4. Pagos del Monto Bruto del Acuerdo. En un plazo de 14 días después de que los
Demandados financien el Monto Bruto del Acuerdo, el Administrador enviará por correo cheques
correspondientes a todos los Pagos Individuales del Grupo, todos los Pagos Individuales de
PAGA, el Pago de la LWDA en concepto de PAGA, el Pago por los Gastos de Administración,
el Pago de Honorarios del Abogado del Grupo, el Pago por los Gastos de Litigio del Abogado del
Grupo y el Pago por los Servicios prestados por la Representante del Grupo. El desembolso del

Pago de los Honorarios del Abogado del Grupo, el Pago por los Gastos de Litigio del Abogado del Grupo y el Pago por los Servicios prestados por la Representante del Grupo no se realizarán antes del desembolso de los Pagos Individuales del Grupo y los Pagos Individuales de PAGA.

4.4.1. El Administrador emitirá cheques para los Pagos Individuales del Grupo y/o los Pagos Individuales de PAGA y los enviará a los Miembros del Grupo por correo postal de primera clase de los Estados Unidos, con franqueo prepagado. En el anverso de cada cheque se indicará de manera destacada la fecha (no menos de 180 días después de la fecha de envío) en que se el cheque quedará anulado. El Administrador cancelará todos los cheques que no se hayan cobrado antes de la fecha de anulación. El Administrador enviará cheques para los Pagos Individuales del Acuerdo a todos los Miembros del Grupo Participantes (incluidos los miembros a quienes el Aviso del Grupo fue devuelto por no poder entregarse). El Administrador enviará cheques de los Pagos Individuales de PAGA a todos los Empleados Agraviados, incluidos los Miembros del Grupo No Participantes que reúnan los requisitos para ser considerados Empleados Agraviados (incluidos a miembros a quienes el Aviso del Grupo fue devuelto por no poder entregarse). El Administrador podrá enviar a los Miembros del Grupo Participantes un único cheque que combine el Pago Individual del Grupo y el Pago Individual de PAGA. Antes de enviar cualquier cheque, el Administrador deberá actualizar las direcciones postales de los destinatarios utilizando la Base de Datos Nacional de Cambios de Dirección.

4.4.2. El Administrador debe realizar una Búsqueda de Direcciones de los Miembros del Grupo para todos los demás Miembros del Grupo cuyos cheques se devuelven sin entregar y sin la dirección de reenvío del Servicio Postal de Estados Unidos (USPS). En un plazo de 7 días después de recibir un cheque devuelto por no poder entregarse, el Administrador deberá volver a enviar los cheques por correo a la dirección de reenvío de USPS proporcionada o a una dirección determinada mediante la Búsqueda de Direcciones de los Miembros del Grupo. El Administrador no tendrá que tomar medidas adicionales para entregar los cheques a los Miembros del Grupo cuyos cheques enviados por correo se devuelven por no poder entregarse. El Administrador enviará de inmediato un cheque de reemplazo a cualquier Miembro del Grupo cuyo cheque original se haya perdido o extraviado, si así lo solicita el Miembro del Grupo antes de la fecha de anulación.

4.4.3. Para los Miembros del Grupo cuyo cheque de Pago Individual del Grupo o cheque de Pago Individual de PAGA no se cobre y se cancele después de la fecha de anulación, el Administrador transferirá los fondos representados por dichos cheques al Fondo de Propiedad No Reclamada del Contralor de California a nombre del Miembro del Grupo, sin dejar así ningún “saldo pendiente de pago” sujeto a los requisitos de la sección 384, inciso (b) del Código de

Procedimiento Civil de California.

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

5. [OMITIDO]

6. EXONERACIONES DE RECLAMACIONES. A partir de la fecha en que los Demandados financien completamente el Monto Bruto del Acuerdo y financien todos los impuestos sobre la nómina laboral adeudados sobre la Porción Salarial de los Pagos Individuales del Grupo, la Demandante, los Miembros del Grupo y el Abogado del Grupo exonerarán a todas las Partes Exoneradas de las reclamaciones de la siguiente manera:

6.1 Exoneración de Responsabilidades de la Demandante. La Demandante y sus respectivos cónyuges, representantes, agentes, abogados, herederos, administradores, sucesores y cesionarios anteriores y presentes en general, exoneran y liberan a las Partes Exoneradas de todas las reclamaciones, transacciones o sucesos que ocurrieron durante el Período del Grupo, incluidos, entre otros: (a) todas las reclamaciones que se alegaron, o que razonablemente podrían haberse alegado, basándose en los hechos incluidos en la Demanda Operativa y (b) todas las reclamaciones de PAGA que se alegaron, o que razonablemente podría haberse alegado basándose en los hechos incluidos en la Demanda Operativa, el Aviso de PAGA de la Demandante, o que se determinaron durante la Acción y se liberaron según lo dispuesto en el Párrafo 6.3, más adelante. (“Exoneración de la Demandante”) La Exoneración de la Demandante no se extiende a ninguna reclamación o acción para hacer cumplir este Acuerdo, ni a ninguna reclamación por beneficios adquiridos, beneficios por desempleo, beneficios por discapacidad, beneficios del seguro social, beneficios de compensación para trabajadores que hayan surgido en cualquier momento, o que se basen en acontecimientos ajenos al Período del Grupo. La Demandante reconoce que la Demandante puede llegar a enterarse de hechos o leyes diferentes o adicionales a los hechos o la ley que la Demandante ahora conoce o cree que son ciertos en este momento, pero acepta, no obstante, que la Exoneración de Responsabilidades de la Demandante será y seguirá siendo efectiva en todos los aspectos, independientemente de dichos hechos diferentes o adicionales o de enterarse de estos hechos por parte de la Demandante.

6.1.1 Exoneración de los derechos de la Demandante bajo la Sección 1542 del Código Civil de California. A los efectos de la Exoneración de la Demandante, la Demandante renuncia expresamente y renuncia a las disposiciones, derechos y beneficios, si los hubiera, de la

Sección 1542 del Código Civil de California, que dice lo siguiente:

Una exoneración general no cubre las reclamaciones que el acreedor o la parte exonerante desconoce o sospecha que existen a su favor en el momento de firmar la exoneración, y que, de haberlas conocido, habrían afectado de manera significativa su acuerdo con el deudor o la parte exonerada.

6.2 Exoneración de Responsabilidades por parte de los Miembros del Grupo Participantes: Todos los Miembros del Grupo Participantes, en nombre propio y en el de sus respectivos representantes, agentes, abogados, herederos, administradores, sucesores y cesionarios tanto anteriores y presentes, exoneran a las Partes Exoneradas de todos las reclamaciones y/o teorías de responsabilidad que se hayan presentado o pudieran haberse presentado en cualquiera de los alegatos presentados en la Demanda Operativa de la Acción, basada en los hechos y teorías alegadas en la misma y en el Aviso de PAGA, incluyendo, entre otras, las reclamaciones por salarios mínimos no pagados y/o pagados por debajo del mínimo, horas extras y/u horas dobles, no proporcionar descansos para comer que cumplan con la normativa, no proporcionar descansos que cumplan con la normativa, no pagar las primas por descansos para comer y/o descansos a la tarifa salarial regular, no pagar oportunamente todos los salarios adeudados durante y/o al finalizar la relación laboral, no proporcionar nominas salariales detalladas y precisas, no mantener registros laborales precisos, competencia desleal según la sección 17200 *et. seq.* del Código de Negocios y Profesionales de California. La exoneración incluirá la exoneración de las secciones 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 del Código Laboral de California, las Órdenes Salariales pertinentes emitidas por la Comisión de Bienestar Industrial, las reclamaciones por honorarios y costos de abogados y las reclamaciones derivadas por sanciones legales. Excepto por lo establecido en la Sección 6.3 de este Acuerdo, los Miembros del Grupo Participantes no exoneran ninguna otra reclamación, incluidas las reclamaciones por beneficios adquiridos, despido injustificado, violación de la Ley de Empleo y Vivienda Justos, seguro de desempleo, discapacidad, seguro social, compensación por accidente laboral o reclamaciones basadas en hechos ocurridos fuera del Período del Grupo.

6.3 Exoneración de responsabilidades por parte de los Empleados Agraviados. La Demandante, en nombre propio, en el de los Empleados Agraviados y en el del Estado de California, exonera a las Partes Exoneradas de todas las reclamaciones y/o teorías de responsabilidad por sanciones civiles en virtud de PAGA que se hayan presentado o podrían haberse presentado en cualquiera de los escritos presentados en la Acción basándose en los hechos y teorías alegados en la misma y en el Aviso de PAGA, incluyendo, entre otros, las secciones

201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 del Código Laboral de California, las Órdenes Salariales pertinentes emitidas por la Comisión de Bienestar Industrial, las reclamaciones por honorarios y costos de abogados y las reclamaciones derivadas por sanciones civiles. La Demandante no exonera la reclamación por salarios o daños y perjuicios de ningún Empleado Agraviado, a menos que dicho Empleado Agraviado sea un Miembro del Grupo Participante.

7. MOCIÓN DE APROBACIÓN PRELIMINAR. La Demandante se compromete a preparar y presentar una moción de aprobación preliminar (“Moción de Aprobación Preliminar”) que cumpla con la lista de verificación actual del Tribunal para las Aprobaciones Preliminares. Se adjunta como Anexo B una propuesta de Orden de Aprobación Preliminar.

7.1 Declaración de los Demandados en Apoyo de la Aprobación Preliminar. En un plazo de diez (10) días después de firmar completamente este Acuerdo, los Demandados prepararán y entregarán al Abogado del Grupo una Declaración firmada por los Demandados y el Abogado de la Defensa en la que se revelarán todos los hechos relevantes para cualquier conflicto de intereses real o potencial con el Administrador. En sus Declaraciones, el Abogado de la Defensa y los Demandados deberán declarar que no tienen conocimiento de ningún otro asunto o acción pendiente que presente reclamaciones que se extinguirán o se verán afectadas negativamente por el Acuerdo.

7.2 Responsabilidades de la Demandante. La Demandante preparará y entregará al Abogado de la Defensa todos los documentos necesarios para obtener la aprobación preliminar, incluidos: (i) un borrador del aviso y un memorando en apoyo de la moción de aprobación preliminar que incluya un análisis del acuerdo según *Dunk/Kullar*; (ii) un borrador de la Orden propuesta que otorga la aprobación preliminar y la aprobación del Acuerdo PAGA; (iii) un borrador de Aviso del Grupo propuesto; (iv) una declaración firmada por el Administrador en la que se adjunte su oferta de “no exceder” para administrar el Acuerdo y dando fe de su voluntad de prestar sus servicios; competencia; procedimientos operativos para proteger la seguridad de los Datos del Grupo; montos de cobertura del seguro por cualquier violación de datos, malversación de fondos u otras irregularidades; todos los hechos relevantes para cualquier conflicto de intereses real o potencial con los Miembros del Grupo; y la naturaleza y el alcance de cualquier relación financiera con la Demandante, el Abogado del Grupo o el Abogado de la Defensa; (v) una declaración firmada por la Demandante en la que confirme su voluntad y competencia para prestar servicios y divulgar todos los hechos relevantes para cualquier conflicto de intereses real o potencial con los Miembros del Grupo y/o el Administrador; (v) una declaración firmada por cada bufete de Abogados del Grupo que acredite su competencia para

1 representar a los Miembros del Grupo; su transmisión oportuna a la LWDA de todos los
2 documentos necesarios de PAGA (aviso inicial de violaciones (sección 2699.3, inciso (a) del
3 Código Laboral), Demanda operativa (sección 2699, inciso (1)(1) del Código Laboral), este
4 Acuerdo (sección 2699, inciso (1)(2) del Código Laboral); vi) una versión del Acuerdo de las
5 Partes en la que se indiquen todas las modificaciones realizadas al Acuerdo Modelo, lista para su
6 presentación ante el Tribunal; y (vii) todos los hechos relevantes para cualquier conflicto de
7 intereses real o potencial con los Miembros del Grupo, el Administrador y/o el Beneficiario de
8 Cy Pres. En sus Declaraciones, la Demandante y el Abogado del Grupo afirmarán que no tienen
9 conocimiento de ningún otro asunto o acción pendiente que presente reclamaciones las cuales se
10 extinguirán o se verán afectados negativamente por el Acuerdo.

11 7.3 Responsabilidades del Abogado. El Abogado del Grupo será responsable de
12 finalizar y presentar rápidamente la Moción de Aprobación Preliminar en un plazo máximo de 30
13 días después de firmar completamente el presente Acuerdo; obtener una fecha de audiencia
14 expedita para la Moción de Aprobación Preliminar; y por comparecer ante el Tribunal para abogar
15 a favor de la Moción de Aprobación Preliminar. El Abogado del Grupo es responsables de
16 entregar la Aprobación Preliminar del Tribunal al Administrador.

17 7.4 Obligación de Cooperar. Si las Partes no están de acuerdo sobre algún aspecto de
18 la Moción de Aprobación Preliminar propuesta y/o las declaraciones y documentos de apoyo, el
19 Abogado del Grupo y el Abogado de la Defensa colaborarán conjuntamente de manera expedita
20 en nombre de las Partes, reuniéndose en persona o por teléfono, y de buena fe, para resolver el
21 desacuerdo. Si el Tribunal no otorga la Aprobación Preliminar o condiciona la Aprobación
22 Preliminar a cualquier cambio sustancial en el presente Acuerdo, el Abogado del Grupo y el
23 Abogado de la Defensa colaborarán conjuntamente de manera expedita en nombre de las Partes,
24 reuniéndose en persona o por teléfono, y de buena fe, para modificar el Acuerdo y satisfacer las
25 posibles inquietudes del Tribunal.

26 **8. ADMINISTRACIÓN DEL ACUERDO.**

27 8.1 Selección del Administrador. Las Partes han seleccionado conjuntamente a
28 Phoenix Settlement Administrators para que actúe como Administradores y han verificado que,
como condición para su nombramiento, Phoenix Settlement Administrators acepta quedar sujeto
al presente Acuerdo y desempeñar, en calidad de fiduciario, todas las funciones especificadas en
este Acuerdo a cambio del pago de los Gastos de Administración. Las Partes y sus Abogados
declaran que no tienen ningún interés ni relación, financiera o de otro tipo, con el Administrado,
excepto la relación profesional derivada de experiencias previas en la administración de acuerdos.

1 8.2 Número de Identificación del Empleador. El Administrador deberá tener y
2 utilizar su propio Número de Identificación del Empleador para calcular las retenciones de
3 impuestos sobre las nóminas y proporcionar informes a las autoridades fiscales, estatales y
4 federales.

5 8.3 Fondo de liquidación calificado. El Administrador establecerá un fondo de
6 liquidación que cumpla con los requisitos de un Fondo de Liquidación Calificado (Qualified
7 Settlement Fund “QSF”) según la sección 468B-1 del Reglamento del Tesoro de los Estados
8 Unidos.

9 8.4 Aviso a los Miembros del Grupo.

10 8.4.1 En un plazo máximo de tres (3) días hábiles después de recibir los Datos
11 del Grupo, el Administrador notificará al Abogado del Grupo que se ha recibido la lista e indicará
12 el número de Miembros del Grupo, Empleados Agraviados, Semanas Laborales y Períodos de
13 Pago de PAGA en los Datos del Grupo.

14 8.4.2 El Administrador hará todo lo posible para actuar lo antes posible, y en
15 ningún caso pasarán más de 14 días después de recibir los Datos del Grupo, para enviar a todos
16 los Miembros del Grupo identificados en los Datos del Grupo, a través del correo de primera clase
17 del Servicio Postal de los Estados Unidos (“USPS”), el Aviso del Grupo con traducción al
18 español, si corresponde, sustancialmente en la forma adjunta a este Acuerdo como Anexo A. La
19 primera página del Aviso del Grupo deberá incluir de manera destacada la estimación de los
20 montos en dólares de cualquier Pago Individual del Grupo y/o Pago Individual de PAGA
21 pagadero al Miembro del Grupo, así como el número de Semanas Laborales y Períodos de Pago
22 de PAGA (si corresponde) utilizados para calcular estos montos. Antes de enviar por correo los
23 Avisos del Grupo, el Administrador deberá actualizar las direcciones de los Miembros del Grupo
24 utilizando la base de datos Nacional de Cambios de Dirección.

25 8.4.3 En un plazo máximo de 3 días hábiles después de que el Administrador
26 reciba cualquier Aviso del Grupo devuelto por USPS como no entregado, el Administrador
27 volverá a enviar por correo postal el Aviso del Grupo utilizando la dirección de reenvío
28 proporcionada por USPS. Si USPS no proporciona una dirección de reenvío, el Administrador
realizará una Búsqueda de Direcciones de los Miembros del Grupo y volverá a enviar por correo
el Aviso del Grupo a la dirección más reciente obtenida. El Administrador no tiene la obligación
de realizar más intentos de localizar o enviar el Aviso del Grupo a los Miembros del Grupo cuyo
Aviso del Grupo sea devuelto por USPS por segunda vez.

1 8.4.4 Los plazos para las objeciones por escrito de los Miembros del Grupo, las
2 impugnaciones a las Semanas Laborales y/o los Períodos de Pago de PAGA, y las Solicitudes de
3 Exclusión se ampliarán 14 días adicionales más allá de los 60 días previstos en el Aviso del Grupo
4 para todos los Miembros del Grupo cuyo Aviso del Grupo se vuelva a enviar por correo. El
5 Administrador informará a los Miembros del Grupo de la ampliación del plazo junto con el Aviso
del Grupo reenviado por correo.

6 8.4.5 Si el Administrador, los Demandados o el Abogado del Grupo son
7 contactados por personas que creen que deberían haber sido incluidas en los Datos del Grupo y
8 deberían haber recibido el Aviso del Grupo, las Partes se reunirán y consultarán de inmediato, en
9 persona o por teléfono, y de buena fe, con el fin de acordar si deben ser incluidos como Miembros
10 del Grupo. Si las Partes están de acuerdo, dichas personas serán Miembros del Grupo con los
11 mismos derechos que los demás Miembros del Grupo, y el Administrador les enviará, por correo
12 electrónico o entrega al día siguiente, un Aviso del Grupo en el que se les solicitará que ejerzan
13 las opciones previstas en el presente Acuerdo en un plazo máximo de 14 días después de recibir
el Aviso del Grupo, o en las fechas límite indicadas en el Aviso del Grupo, la fecha que resulte
en un plazo más largo.

14 8.5 Solicitudes de exclusión (Opt-Outs).

15 8.5.1 Los Miembros del Grupo que deseen excluirse (optar por no participar) del
16 Acuerdo del Grupo deberán enviar al Administrador, por fax, correo electrónico o correo postal,
17 una Solicitud de Exclusión por escrito y firmada en un plazo de 60 días a partir de la fecha en
18 que el Administrador envíe por correo el Aviso del Grupo (más 14 días adicionales para los
19 Miembros del Grupo cuyo Aviso del Grupo se vuelva a enviar por correo). Una Solicitud de
20 Exclusión es una carta de un Miembro del Grupo o su representante en la que comunica de forma
21 razonable la decisión del Miembro del Grupo de ser excluido del Acuerdo y que incluya el
22 nombre, la dirección y la dirección de correo electrónico o el número de teléfono del Miembro
del Grupo. Para que sea válida, la Solicitud de exclusión debe enviarse oportunamente por fax,
correo electrónico o con sello del correo postal antes de la fecha límite de respuesta.

23 8.5.2 El Administrador no podrá rechazar una Solicitud de Exclusión por no
24 ser válida porque no contiene toda la información especificada en el Aviso del Grupo. El
25 Administrador aceptará las Solicitudes de Exclusión como válidas si el Administrador puede
26 determinar razonablemente la identidad de la persona como Miembro del Grupo y el deseo del
27 Miembro del Grupo de ser excluido. La decisión del Administrador será definitiva y no será
28 apelable ni susceptible de impugnación. Si el Administrador tiene motivos para cuestionar la

1 autenticidad de una Solicitud de Exclusión, el Administrador puede solicitar pruebas adicionales
2 de la identidad del Miembro del Grupo. La decisión de autenticidad del Administrador será
3 definitiva y no será apelable ni susceptible de impugnación.

4 8.5.3 Todo Miembro del Grupo que no presente una Solicitud de Exclusión
5 válida y dentro del plazo establecido se considerará Miembro del Grupo Participante de
6 conformidad con el presente Acuerdo, con derecho a todos los beneficios y sujeto a todos los
7 términos y condiciones del Acuerdo, incluidas las Exoneraciones de Responsabilidades de los
8 Miembros del Grupo Participantes de conformidad con los Párrafos 6.2 y 6.3 del presente
9 Acuerdo, independientemente de si el Miembro del Grupo Participante reciba efectivamente el
10 Aviso del Grupo o se opone Acuerdo.

11 8.5.4 Cada Miembro del Grupo que presente una Solicitud de Exclusión válida
12 y dentro del plazo establecido se considerará Miembro del Grupo No Participante y no recibirá
13 un Pago Individual del Grupo ni tendrá derecho a oponerse a los componentes de acción del
14 Acuerdo. Se considerará que los Miembros del Grupo No Participantes que sean Empleados
15 Agraviados exoneran a las reclamaciones identificadas en el Párrafo 6.3 de este Acuerdo y tendrán
16 derecho a un Pago Individual de PAGA.

17 8.6 Impugnaciones del Cálculo de las Semanas Laborales. Cada Miembro del Grupo
18 tendrá 60 días después de que el Administrador envíe por correo el Aviso del Grupo (más 14 días
19 adicionales para los Miembros del Grupo cuyo Aviso del Grupo se vuelva a enviar por correo)
20 para impugnar el número de las Semanas Laborales del Grupo y los Períodos de Pago de PAGA
21 (si corresponde) asignados al Miembro del Grupo en el Aviso del Grupo. Esto también se conoce
22 como disputa. El Miembro del Grupo puede impugnar la asignación comunicándose con el
23 Administrador por fax, correo electrónico o correo postal. El Administrador debe animar al
24 Miembro del Grupo que impugna la asignación a que presente la documentación de apoyo. En
25 ausencia de documentación que demuestre lo contrario, el Administrador tiene derecho a suponer
26 que las semanas laborales que aparecen en el Aviso del Grupo son correctas, siempre que sean
27 consistentes con los Datos del Grupo. La decisión del Administrador sobre la asignación de
28 Semanas Laborales y/o Períodos de Pago de PAGA a cada Miembro del Grupo será definitiva y
no será apelable ni susceptible de impugnación. El Administrador proporcionará de inmediato
copias de todas las impugnaciones al cálculo de las Semanas Laborales y/o los Períodos de Pago
de PAGA al Abogado de la Defensa y al Abogado del Grupo, así como la decisión del
Administrador sobre las impugnaciones.

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1 8.7 Objeciones al Acuerdo.

2 8.7.1 Únicamente los Miembros del Grupo Participantes pueden objetar los
3 componentes de la Acción del Grupo de la Conciliación y/o este Acuerdo, incluyendo impugnar
4 la equidad de la Conciliación y/o los montos solicitados para el Pago de los Honorarios del
5 Abogado del Grupo, el Pago de los Gastos de Litigio del Abogado del Grupo y/o el Pago de los
6 Servicios de la Representante del Grupo.

7 8.7.2 Los Miembros del Grupo Participantes pueden enviar objeciones por
8 escrito al Administrador, por fax, correo electrónico o correo postal. Como alternativa, los
9 Miembros del Grupo Participantes pueden comparecer ante el Tribunal (o contratar a un abogado
10 para que comparezca ante el Tribunal) para presentar objeciones verbales en la Audiencia de
11 Aprobación Final. Los Miembros del Grupo Participantes que decidan enviar una objeción por
12 escrito al Administrador deben hacerlo en un plazo máximo de 60 días a partir de la fecha de
13 envío por correo del Aviso del Grupo por parte del Administrador (más 14 días adicionales para
14 los Miembros del Grupo cuyo Aviso del Grupo se volvió a enviar por correo).

15 8.7.3 Los Miembros del Grupo No Participantes no tienen derecho a oponerse a
16 ninguno de los componentes de la Acción del Grupo del Acuerdo.

17 8.8 Obligaciones del Administrador. El Administrador tiene la obligación de realizar
18 o cumplir todas las obligaciones que le correspondan según lo establecido en el presente Acuerdo
19 o en cualquier otro documento.

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

 8.8.2 Solicitudes de Exclusión (Opt-outs) y Lista de Exclusión. El
Administrador revisará de forma inmediata y continua las Solicitudes de Exclusión para
determinar su validez. En un plazo máximo de 5 días después de la expiración del plazo para
presentar las Solicitudes de Exclusión, el Administrador enviará por correo electrónico una lista

1 al Abogado del Grupo y al Abogado de la Defensa que incluirá (a) los nombres y otra información
2 de identificación de los Miembros del Grupo que hayan presentado oportunamente las Solicitudes
3 de Exclusión válidas (“Lista de Exclusión”); (b) los nombres y otra información de identificación
4 de los Miembros del Grupo que hayan presentado Solicitudes de Exclusión no válidas; (c) copias
de todas las Solicitudes de Exclusión del Acuerdo presentadas (ya sean válidas o no válidas).

5 8.8.3 Informes Semanales. El Administrador deberá proporcionar semanalmente
6 informes por escrito al Abogado del Grupo y al Abogado de la Defensa que, entre otras cosas, se
7 recopile el número de: Avisos del Grupo enviados o reenviados por correo, Avisos del Grupo
8 devueltos por no haberse podido entregar, Solicitudes de Exclusión (ya sean válidas o no válidas)
9 recibidas, objeciones recibidas, impugnaciones a las Semanas Laborales y/o Períodos de Pago de
10 PAGA recibidos y/o resueltos, y cheques enviados por correo para Pagos Individuales del Grupo
11 y Pagos Individuales de PAGA (“Informe Semanal”). Los Informes Semanales deben incluir la
12 evaluación del Administrador sobre la validez de las Solicitudes de Exclusión y adjuntar copias
de todas las Solicitudes de Exclusión y objeciones recibidas.

13 8.8.4 Impugnaciones relacionadas con las Semanas Laborales y/o el Período de
14 Pago de PAGA. El Administrador tiene la autoridad para atender y tomar decisiones finales
15 consistentes con los términos de este Acuerdo, sobre todas las impugnaciones de los Miembros
16 del Grupo sobre el cálculo de las Semanas Laborales y/o los Períodos de Pago de PAGA. La
17 decisión del Administrador será definitiva e inapelable ni susceptible de impugnación.

18 8.8.5 Declaración del Administrador. En un plazo máximo de 14 días antes de la
19 fecha en que la Demandante deberá presentar la Moción para la Aprobación Final del Acuerdo,
20 el Administrador proporcionará al Abogado del Grupo y al Abogado de la Defensa, una
21 declaración firmada apta para su presentación ante el Tribunal en la que certifique su diligencia
22 y cumplimiento de todas las obligaciones establecidas en el presente Acuerdo, incluyendo, entre
23 otras, el envío por correo del Aviso del Grupo, los Avisos del Grupo devueltos por no haberse
24 podido entregar, el reenvío de los Avisos del Grupo, los intentos de localizar a los Miembros del
25 Grupo, el número total de Solicitudes de Exclusión del Acuerdo que haya recibido (tanto válidas
26 como no válidas), el número de objeciones por escrito y adjuntará la Lista de Exclusión. El
27 Administrador complementará su declaración según sea necesario o solicitado por las Partes y/o
28 el Tribunal. El Abogado del Grupo es responsable de presentar las declaraciones del
Administrador ante el Tribunal.

8.8.6 Informe Final del Administrador. En un plazo de 10 días después de que el
Administrador haya desembolsado la totalidad de los fondos del Monto Bruto del Acuerdo, el

Administrador proporcionará al Abogado del Grupo y al Abogado de la Defensa un informe final en el que se detallarán los desembolsos realizados, desglosados únicamente por el número de identificación del empleado, de todos los pagos realizados de conformidad con el presente Acuerdo. Por lo menos 15 días antes de cualquier fecha límite establecida por el Tribunal, el Administrador preparará y presentará al Abogado del Grupo y al Abogado de la Defensa una declaración firmada adecuada para su presentación ante el Tribunal en la que certifique el desembolso de todos los pagos requeridos de conformidad con el presente Acuerdo. El Abogado del Grupo es responsable de presentar la declaración del Administrador ante el Tribunal.

9. ESTIMACIONES DEL TAMAÑO DEL GRUPO Y CLÁUSULA DE AJUSTE. En base a una revisión de los registros de los Demandados hasta la fecha, los Demandados estiman que hay 106 Miembros del Grupo que colectivamente trabajaron un total de 6,204 semanas laborales. Si el total de semanas laborales trabajadas por los Miembros del Grupo durante el Período del Grupo supera las 6,204 en más del diez por ciento (10%) a la fecha en que el Tribunal otorgue la aprobación preliminar del acuerdo (es decir, más de 6,824 semanas laborales), entonces el Monto Bruto del Acuerdo, que incluya el Pago de los Honorarios del Abogado del Grupo, el Pago por los Servicios de la Representante del Grupo, la asignación de Sanciones de PAGA, y los Pagos Individuales del Grupo, aumentarán proporcionalmente según el número de semanas laborales adicionales por encima del diez por ciento (10%) (por ejemplo, si el número de semanas laborales aumenta en un 11%, entonces el Monto Bruto del Acuerdo se incrementará en un 1%).

10. DERECHO DE LOS DEMANDADOS A RETIRARSE. Si el número de Solicitudes de Exclusión válidas identificadas en la Lista de Exclusión supera el ocho por ciento (8%) del total de todos los Miembros del Grupo, los Demandados pueden, sin estar obligados a hacerlo, optar por retirarse del Acuerdo. Las Partes acuerdan que, si los Demandados se retiran, el Acuerdo será nulo ab initio, no tendrá validez ni efecto alguno, y que ninguna de las Partes tendrá ninguna otra obligación de cumplir con lo establecido en el presente Acuerdo; siempre que, los Demandados seguirán siendo responsables del pago de todos los Gastos de Administración del Acuerdo incurridos hasta ese momento. Los Demandados deberán notificar al Abogado del Grupo y al Tribunal su decisión de retirarse en un plazo máximo de 7 días después de que el Administrador envíe la Lista de Exclusión final al Abogado de la Defensa; las decisiones tardías no tendrán ningún efecto.

11. MOCIÓN PARA LA APROBACIÓN FINAL. En un plazo máximo de 16 días hábiles antes de la Avista de Aprobación Final programada, la Demandante presentará ante el Tribunal

1 una moción para la aprobación final del Acuerdo, que incluye una solicitud de aprobación del
2 acuerdo PAGA bajo la sección 2699, inciso (l) del Código Laboral, una propuesta de Orden de
3 Aprobación Final y una propuesta de Sentencia (colectivamente “Moción de Aprobación Final”).
4 La Demandante deberá proporcionar borradores de estos documentos al Abogado de la Defensa
5 a más tardar 7 días antes de presentar la Moción de Aprobación Final. El Abogado del Grupo y
6 el Abogado de la Defensa se reunirán y consultarán de manera expedita en persona o por teléfono,
7 y de buena fe, para resolver cualquier desacuerdo relacionado con la Moción de Aprobación Final.

8 11.1 Respuesta a las Objeciones. Cada Parte se reserva el derecho de responder a las
9 objeciones planteadas por un Miembro del Grupo Participante, incluido el derecho a presentar
10 documentos de respuesta ante el Tribunal a más tardar 5 días hábiles antes de la Audiencia de
11 Aprobación Final, o según lo ordene o acepte el Tribunal.

12 11.2 Obligación de Cooperar. Si el Tribunal no otorga la Aprobación Final o
13 condiciona la Aprobación Final a cambios sustanciales en el Acuerdo (incluido, entre otros, el
14 alcance de la exoneración que otorgarán los Miembros del Grupo y/o los Empleados Agravados),
15 las Partes colaborarán conjuntamente de buena fe de manera expedita para atender las
16 preocupaciones del Tribunal, revisando el Acuerdo según sea necesario para obtener la
17 Aprobación Final. La decisión del Tribunal de otorgar menos de los montos solicitados para el
18 Pago por los Servicios de la Representante del Grupo, el Pago de los Honorarios del Abogado del
19 Grupo, el Pago de los Gastos de Litigios del Abogado del Grupo y/o el Pago de los Gastos del
20 Administrador no constituirá una modificación sustancial del Acuerdo en el sentido de este
21 párrafo.

22 11.3 Jurisdicción continua del Tribunal. Las Partes acuerdan que, después de la
23 emisión de la Sentencia, el Tribunal conservará la jurisdicción sobre las Partes, la Acción y el
24 Acuerdo únicamente para los fines de (i) hacer cumplir el presente Acuerdo y/o la Sentencia, (ii)
25 atender los asuntos relacionados con la administración del acuerdo y (iii) atender los asuntos
26 posteriores a la Sentencia que estén permitidos por la ley.

27 11.4 Renuncia al Derecho de Apelación. Siempre que la Sentencia sea coherente con
28 los términos y condiciones del presente Acuerdo, incluyendo específicamente el Pago de los
Honorarios del Abogado del Grupo y el Pago de los Gastos de Litigio del Abogado del Grupo
reflejados en el presente Acuerdo, las Partes, sus respectivos abogados y todos los Miembros del
Grupo Participantes que no se opusieron al Acuerdo según lo dispuesto en este Acuerdo,
renuncian a todos los derechos de apelación de la sentencia, incluyendo todos los derechos a los
procedimientos posteriores a la sentencia y de apelación, el derecho a presentar mociones para

1 anular la sentencia, mociones para un nuevo juicio, recursos extraordinarios y apelaciones. La
2 renuncia al derecho de apelación no incluye ninguna renuncia al derecho a oponerse a este tipo
3 de mociones, escritos o apelaciones. Si un objetor apela la Sentencia, las obligaciones de las Partes
4 de cumplir con este Acuerdo se suspenderán hasta que se resuelva definitivamente la apelación y
5 la Sentencia sea definitiva, excepto en lo que respecta a asuntos que no afecten el Monto Neto del
6 Acuerdo.

6 11.5 Órdenes del Tribunal de Apelación para Anular, Revocar o Modificar
7 Sustancialmente la Sentencia. Si el Tribunal revisor anula, revoca o modifica la Sentencia de una
8 manera que requiera una modificación sustancial del presente Acuerdo (incluido, entre otros, el
9 alcance de la Exoneración que otorgarán los Miembros del Grupo y/o los Empleados Agraviados),
10 este Acuerdo será nulo y sin efecto. No obstante, las Partes colaborarán conjuntamente de buena
11 fe de manera expedita para atender las preocupaciones del tribunal de apelación y obtener la
12 Aprobación Final y la Sentencia, compartiendo al cincuenta por ciento 50%, los Gastos de
13 Administración adicionales en que se incurra razonablemente después de la remisión. Una
14 decisión de apelación para anular, revocar o modificar la adjudicación por parte del Tribunal del
15 Pago por Servicios prestados por la Representante del Grupo o cualquier pago al Abogado del
16 Grupo no constituirá una modificación sustancial de la Sentencia en el sentido de este párrafo,
17 siempre que el Monto Bruto del Acuerdo permanezca sin cambios.

16 **12. SENTENCIA ENMENDADA.** Si se requiere alguna sentencia enmendada en virtud de la
17 sección 384 del Código de Procedimiento Civil, las Partes colaborarán conjuntamente de buena
18 fe para presentar conjuntamente una propuesta de sentencia enmendada.

18 **13. DISPOSICIONES ADICIONALES.**

19 13.1 Sin admisión de responsabilidad, certificación del Grupo o capacidad de
20 representación para otros fines. El presente Acuerdo representa un compromiso y solución de las
21 reclamaciones muy controvertidas. Nada de lo dispuesto en el presente Acuerdo pretende ni debe
22 interpretarse como una admisión por parte de los Demandados de que cualquiera de las
23 alegaciones en la Demanda Operativa tenga fundamento o de que los Demandados tengan alguna
24 responsabilidad por las reclamaciones presentadas; tampoco debe pretenderse o interpretarse
25 como una admisión por parte de la Demandante de que las defensas de los Demandados en la
26 Acción tengan fundamento. Las Partes acuerdan que la certificación del Grupo y el trato
27 representativo son únicamente para los fines de este Acuerdo. Si, por cualquier motivo, el
28 Tribunal otorga la Aprobación Preliminar, la Aprobación Final o dicta Sentencia, los
Demandados se reservan el derecho de impugnar la certificación de un grupo por cualquier

1 motivo, y los Demandados se reservan todas las defensas disponibles para las reclamaciones de
2 la Acción, y la Demandante se reserva el derecho de solicitar la certificación del Grupo por
3 cualquier motivo disponible y de impugnar las defensas de los Demandados. La Conciliación, el
4 presente Acuerdo y la voluntad de las Partes de resolver la Acción no tendrán ninguna influencia
5 ni serán admisibles en relación con ningún litigio (excepto en los procedimientos para hacer
6 cumplir o efectuar la Conciliación y el presente Acuerdo).

6 13.2 Confidencialidad. La Demandante, el Abogado del Grupo, los Demandados y el
7 Abogado de la Defensa acuerdan individualmente que, hasta que se presente la Moción de
8 Aprobación Preliminar del Acuerdo, ni la Demandante, ni el Abogado del Grupo, ni los
9 Demandados, ni el Abogado de la Defensa divulgarán, difundirán ni publicitarán, ni causarán o
10 permitirán que otra persona divulgue, difunda o publique, ninguno de los términos del Acuerdo
11 directa o indirectamente, específica o generalmente, a ninguna persona, empresa, asociación,
12 agencia gubernamental u otra entidad, excepto: (1) a los abogados, contadores o cónyuges de las
13 Partes, a quienes se les indicará que mantengan la confidencialidad del presente Acuerdo; (2) a
14 los abogados en asuntos relacionados; (3) en la medida necesaria para declarar los ingresos a las
15 autoridades fiscales correspondientes; (4) que sea en respuesta a una orden judicial o citación; o
16 (5) que dicha divulgación sea requerida, según lo determine el abogado de una de las Parte, por
17 ley, regulación o requisitos contractuales, bursátiles, de inversores, de inversores potenciales o
18 requisitos similares de auditoría o informes aplicables.

19 Cada Parte se compromete a notificar inmediatamente a la otra Parte sobre cualquier orden
20 judicial o administrativa, investigación o citación que solicite dicha información. La Demandante,
21 el Abogado del Grupo, los Demandados y el Abogado de la Defensa acuerdan individualmente
22 no iniciar, directa o indirectamente, ninguna conversación u otra comunicación, antes de la
23 presentación de la Moción de Aprobación Preliminar, con terceros en relación con este Acuerdo
24 o los asuntos que dan lugar a este Acuerdo, excepto para responder únicamente que “el asunto se
25 resolvió” o palabras a tal efecto. No se puede publicar información sobre la Acción o el acuerdo
26 en los sitios web del Abogado del Grupo sin el consentimiento previo por escrito de los
27 Demandados. Los Demandados dan su consentimiento para que el Abogado del Grupo incluyan
28 el nombre y el número del caso, así como una breve descripción de las reclamaciones en las
declaraciones presentadas ante el tribunal en las que se indiquen sus casos anteriores para
acreditar su idoneidad para ser nombrado Abogado del grupo. Este párrafo no restringe las
comunicaciones del Abogado del Grupo con los Miembros del Grupo de conformidad con las
obligaciones éticas que el Abogado del Grupo tiene para con los Miembros del Grupo.

1 13.3 No se permite la captación de los miembros del grupo. Las Partes acuerdan
2 individualmente que ni ellas, ni sus respectivos abogados ni empleados captarán a ningún
3 Miembro del Grupo para que opte por no participar u se oponga al Acuerdo, o apele la Sentencia.
4 Nada de lo dispuesto en este párrafo se interpretará como una restricción de la capacidad del
5 Abogado del Grupo para comunicarse con los Miembros del Grupo de conformidad con las
6 obligaciones éticas que el Abogado del Grupo tiene para con los Miembros del Grupo.

7 13.4 Acuerdo Integrado. Una vez firmado por todas las Partes y sus abogados, el
8 presente Acuerdo, junto con sus anexos adjuntos, constituirá el acuerdo completo entre las Partes
9 en relación con el Acuerdo, sustituyendo todas y cada una de las representación, garantía,
10 convenio o incentivo verbal realizado a o por cualquiera de las Partes.

11 13.5 Autorización del abogado. El Abogado del Grupo y el Abogado de la Defensa
12 garantizan y declaran por separado que están autorizados por la Demandante y los Demandados,
13 respectivamente, para tomar todas las medidas apropiadas requeridas o permitidas por dichas
14 Partes de conformidad con este Acuerdo para dar cumplimiento a sus términos, y para firmar
15 cualquier otro documento que sea razonablemente necesario para dar cumplimiento a los términos
16 del presente Acuerdo, incluidas las enmiendas a este Acuerdo.

17 13.6 Cooperación. Las Partes y sus abogados cooperarán entre sí y harán todo lo
18 posible, de buena fe, para aplicar el Acuerdo, entre otras cosas, modificando el Acuerdo de
19 Conciliación, presentando pruebas complementarias y complementando fundamentos de hecho y
20 de derecho solicitados por el Tribunal. En caso de que las Partes no puedan ponerse de acuerdo
21 sobre la forma o el contenido de cualquier documento necesario para aplicar el Acuerdo, o sobre
22 cualquier modificación del Acuerdo que pueda ser necesaria para implementar el Acuerdo, las
23 Partes solicitarán la asistencia de un mediador y/o del Tribunal para resolverlo.

24 13.7 Sin asignaciones previas. Las Partes declaran y garantizan por separado que no
25 han asignado, transferido, gravado ni pretendido ceder, transferir o gravar directa o
26 indirectamente a ninguna persona o entidad ninguna parte de la responsabilidad, reclamación,
27 demanda, acción, causa de acción o derecho exonerado y liberado por las Partes en este Acuerdo.

28 13.8 Sin asesoramiento fiscal. Ni la Demandante, ni el Abogado del Grupo, ni los
Demandados ni el Abogado de la Defensa proporcionan ningún tipo de asesoramiento con
respecto a los impuestos o la tributación, ni se podrá considerar que nada en lo dispuesto en el
presente Acuerdo constituya asesoramiento fiscal en el sentido de la Circular 230 del
Departamento del Tesoro de los Estados Unidos (31 CFR Parte 10, según su versión enmendada)

ni de ninguna otra manera.

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

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

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

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

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

13.14 Uso y Devolución de los Datos del Grupo. La información proporcionada al Abogado del Grupo de conformidad con el Código de Evidencia de California §1152, y todas las copias y resúmenes de los Datos del Grupo proporcionados al Abogado del Grupo por los Demandados en relación con la mediación, otras negociaciones del acuerdo o en relación con el Acuerdo, únicamente podrán utilizarse en relación con este Acuerdo, y para ningún otro propósito, y no podrán utilizarse de ninguna manera que viole cualquier acuerdo contractual, ley o norma judicial vigente. En un plazo máximo de 90 días a partir de la fecha en que el Tribunal exima al Administrador de su obligación de proporcionar una Declaración que confirme el pago final de todos los fondos del Acuerdo, la Demandante destruirá todas las versiones en papel y electrónicas de los Datos del Grupo recibidos de los Demandados a menos que, antes de que el Tribunal exima al Administrador de su obligación, los Demandados soliciten por escrito al Abogado del Grupo la devolución, en lugar de las destrucciones de los Datos del Grupo.

13.15 Títulos. Los títulos descriptivos de cualquier sección o párrafo del presente Acuerdo se incluyen únicamente para facilitar la referencia y no constituye parte de este Acuerdo.

13.16 Días calendario. A menos que se indique lo contrario, toda referencia a “días” en

1 este Acuerdo se refieren a días calendario. En el caso de que cualquier fecha límite o plazo
2 establecido en este Acuerdo caiga en fin de semana o en día feriado federal, dicha fecha límite o
3 plazo establecido se trasladará al primer día hábil siguiente.

4 13.17 Notificaciones. Todas las notificaciones, requerimientos u otras comunicaciones
5 entre las Partes en relación con este Acuerdo se realizarán por escrito y se considerarán
6 debidamente entregadas al tercer día hábil después de su envío por correo postal de los Estados
7 Unidos, o el día de su envío por correo electrónico o mensajería, a la siguiente dirección:

8 Al demandante:
9 David Glenn Spivak, Esq.
10 The Spivak Law Firm
11 8605 Santa Monica Bl
12 PMB 42554
13 West Hollywood, CA 90069
14 david@spivaklaw.com

15 Al demandado:
16 Shareef S. Farag
17 Nicholas D. Poper
18 BAKER & HOSTETLER LLP
19 1900 Avenue of the Stars, Suite 2700
20 Los Angeles, CA 90067-4301
21 sfarag@bakerlaw.com
22 npoper@bakerlaw.com

23 13.18 Firma en copias. Este Acuerdo podrá firmarse en una o varias copias por fax, por
24 medios electrónicos (por ejemplo, DocuSign) o por correo electrónico, que a los efectos de este
25 Acuerdo se aceptarán como originales. Todas las copias firmadas y cada una de las copias se
26 considerarán un mismo documento si los abogados de las Partes intercambian entre ellos copias
27 firmadas. Las copias firmadas serán admisibles como prueba de la existencia y el contenido de
28 este Acuerdo.

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1 13.19 Suspensión del litigio. Las Partes acuerdan que, una vez firmado este Acuerdo,
2 se suspenderá el litigio, excepto para dar cumplimiento a los términos de este Acuerdo. Las Partes
3 acuerdan además que, al firmar este Acuerdo, de conformidad con la sección 583.330 del Código
4 de Procedimiento Civil, se ampliará el plazo para llevar un caso a juicio de conformidad con la
5 sección 583.310 del Código de Procedimiento Civil, durante todo el período que dure el proceso
6 de conciliación.

7 Fecha: 02 / 06 / 2026

8 Por: 
9 MARIA JACQUELINE BATRES

10 Fecha: _____

11 Por: _____
12 GREG FRIEDMAN
13 En nombre de DIMENSION
14 DEVELOPMENT COMPANY, INC.,
15 DR HOTEL EMPLOYEE LEASING,
16 LLC y DIMENSION
17 DEVELOPMENT TWO, LLC

18 THE SPIVAK LAW FIRM

19 Fecha: _____

20 Por: _____
21 DAVID GLENN SPIVAK, Abogado de
22 la demandante, MARIA JACQUELINE
23 BATRES, y de todas las demás
24 personas en situación similar

25 UNITED EMPLOYEES LAW GROUP

26 Fecha: _____

27 Por: _____
28 WALTER L. HAINES, Abogado de la
Demandante, MARIA JACQUELINE
BATRES, y de todas las demás
personas en situación similar.

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BAKER & HOSTETLER LLP

Fecha: _____

Por: _____

SHAREEF S. FARAG, Abogado de
los Demandados, DIMENSION
DEVELOPMENT COMPANY, INC.,
DR HOTEL EMPLOYEE LEASING,
LLC y DIMENSION
DEVELOPMENT TWO, LLC

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EXHIBIT 2



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069
1801 Century Park East 25th Fl Los Angeles CA 90067
(213) 725-9094
(213) 634-2485
spivaklaw.com

Mail
Office
Tel
Fax
Web

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

October 24, 2024

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

Re: Maria Jacqueline Batres / Dimension Hospitality

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Maria Jacqueline Batres (hereafter “Batres” or “Complainant”) provides notice that Dr Hotel Employee Leasing, LLC, a Delaware limited liability company, Dimension Development Company, Inc., a Louisiana corporation, Dimension Development Two, LLC, a Louisiana limited liability company, and related entities (collectively “the Dr Hotel Employers” or “the Employers”) violated her rights and those of all other individuals the Dr Hotel Employers have employed or otherwise contracted with in California as hourly, non-exempt, including housekeepers and room and suite attendants, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 201.3, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and other Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Batres hereby provides this notice to the Labor & Workforce Development Agency and the Dr Hotel Employers and their agents and representatives.

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

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Statement of Facts

On approximately February 3, 2021, the Dr Hotel Employers began to employ Batres in Pasadena in the position of housekeeper and a room and suite attendant. The Dr Hotel Employers continuously employed her in that capacity until on or about May 29, 2024 when her employment ended.

At all relevant times, the Dr Hotel Employers issued wages to Batres and all of the other Aggrieved Employees on a semimonthly (24 paychecks/year) basis and paid them by the hour. At all relevant times, the Dr Hotel Employers classified Batres and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. Though the Dr Hotel Employers were temp employers, they did not pay Batres and the other Aggrieved Employees on a weekly basis as required by law.

The Dr Hotel Employers failed to compensate Batres 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 Dr Hotel Employers required Batres and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. During these days and weeks, the Dr Hotel Employers required Batres and the other Aggrieved Employees to perform work, including cleaning utensils and preparing cleaning carts, before clocking in and to work through meal periods, though the Dr Hotel Employers did not pay Batres and the other Aggrieved Employees for the time. The Dr Hotel Employers also paid Batres and the other Aggrieved Employees for overtime hours at their regular rates of pay.

At all relevant times, the Dr Hotel Employers failed to provide Batres and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Dr Hotel Employers were under-staffed. They required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without working through meal periods. They also required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without taking meal periods within the first five hours of work or a second meal period on days they worked in excess of 10 hours. The Dr Hotel Employers also failed to pay premium wages for days on which they failed to provide Batres and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Dr Hotel Employers failed to authorize and permit Batres and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Dr Hotel Employers were under-staffed. They required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without working through rest periods. They also required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without taking rest periods within the first three and one half hours of work or a third rest period on days they worked in excess of 10 hours. The Dr Hotel Employers also failed to pay premium wages for days on which they failed to authorize and permit Batres and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Dr Hotel Employers failed to issue to Batres 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 Dr Hotel Employers knowingly and intentionally failed to state on the wage statements they issued to Batres 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 doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

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

The Dr Hotel Employers failed to maintain accurate employee records of Batres and all of the other Aggrieved Employees.

For the reasons stated herein, Batres 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 Dr Hotel Employers failed to pay Batres and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Dr Hotel Employers failed to provide Batres and all of the other Aggrieved Employees all meal periods in compliance with California law;

The Wage Order

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

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

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

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Dr Hotel Employers, Batres, and all of the Aggrieved Employees were covered by the

Wage Order because the Dr Hotel Employers operated, and Batres, and all of the Aggrieved Employees, worked for one or more hotels. Accordingly, Batres and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of

eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

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

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

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

The Dr Hotel Employers required Batres and the other Aggrieved Employees to perform work, including cleaning utensils and preparing cleaning carts, before clocking in and to work through meal periods, though the Dr Hotel Employers did not pay Batres and the other Aggrieved Employees for the time.

The Dr Hotel Employers required Batres and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. During these days and weeks, the Dr Hotel Employers required Batres and the other Aggrieved Employees to perform work, including cleaning utensils and preparing cleaning carts, before clocking in and to work through meal periods, though the Dr Hotel Employers did not pay Batres and the other Aggrieved Employees for the time. The Dr Hotel Employers also paid Batres and the other Aggrieved Employees for overtime hours at their regular rates of pay.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Merry Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Dr Hotel Employers, Batres and all of the other Aggrieved Employees earned awards during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Dr Hotel Employers failed to pay to Batres and all of the other Aggrieved Employees overtime and double time premium pay on such awards, and other non-discretionary compensation.

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

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Dr Hotel Employers failed to provide Batres and all of the other Aggrieved Employees with all timely meal periods. The Dr Hotel Employers denied Batres and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Dr Hotel Employers were under-staffed. They required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without working through meal periods. They also required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without taking meal periods within the first five hours of work or a second meal period on days they worked in excess of 10 hours. Furthermore, the Dr Hotel Employers failed to pay premium wages for days on which they failed to provide Batres and all of the other Aggrieved Employees with timely meal periods. Accordingly, Batres now seeks civil penalties for these Labor Code violations that the Dr Hotel 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)).

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

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable

statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

The Dr Hotel Employers failed to authorize and permit Batres 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 Dr Hotel Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Dr Hotel Employers were under-staffed. They required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without working through rest periods. They also required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without taking rest periods within the first three and one half hours of work or a third rest period on days they worked in excess of 10 hours. Moreover, the Dr Hotel Employers failed to pay Batres and all of the other Aggrieved Employees premium wages on workdays the Dr Hotel Employers failed to provide Batres and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Batres now seeks civil penalties for these Labor Code violations that the Dr Hotel 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 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 Dr Hotel 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 Dr Hotel Employers failed to state in the wage statements they issued to Batres and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Dr Hotel Employers knowingly and intentionally failed to state on the wage statements they issued to Batres and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

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

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

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

The Dr Hotel Employers failed to compensate Batres and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the Dr Hotel Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Batres now seeks civil penalties for the Labor Code violations that the Dr Hotel 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 Dr Hotel Employers failed to pay Batres 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 Batres, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. By failing to pay Batres and all of the other

Aggrieved Employees as set forth above at the end of employment, the Dr Hotel Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Batres seeks civil penalties from the Dr Hotel Employers as follows:

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

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with

rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

LWDA / The Dr Hotel Employers
Re: Maria Jacqueline Batres
October 24, 2024
Page 20 of 20

Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Ms. Maria Jacqueline Batres

Mr. Walter L. Haines, Esq.

Dimension Development Two, LLC
c/o Agent for service of process
1505 Corporation CSC - Lawyers Incorporating Service
2710 Gateway Oaks Dr,
Sacramento, CA 95833

Dimension Development Company, Inc.
c/o Agent for service of process
1505 Corporation C T Corporation System
330 N Brand Blvd,
Glendale, CA 91203

Dr Hotel Employee Leasing, LLC
c/o Agent for service of process
1505 Corporation Corpdirect Agents, Inc.
330 N Brand Blvd,
Glendale, CA 91203

EXHIBIT 3

1 DAVID GLENN SPIVAK (SBN 179684)

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2 THE SPIVAK LAW FIRM

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3 PMB 42554

West Hollywood, CA 90069

4 Telephone: (213) 725-9094

5 Facsimile: (213) 634-2485

6 Attorneys for Plaintiff(s),

7 MARIA JACQUELINE BATRES, and all others similarly situated

(Additional attorneys for Plaintiff(s) on next page)

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9
10 **FOR THE COUNTY OF LOS ANGELES**
11 **(UNLIMITED JURISDICTION)**

12 MARIA JACQUELINE BATRES, on behalf of
13 herself and all others similarly situated, and the
14 general public,

15 *Plaintiff(s),*

16 vs.

17 DIMENSION DEVELOPMENT COMPANY,
18 INC., a Louisiana corporation; DR HOTEL
19 EMPLOYEE LEASING, LLC, a Delaware
20 limited liability company; DIMENSION
21 DEVELOPMENT TWO, LLC, a Louisiana
22 limited liability company; and DOES 1–50,
23 inclusive,

24 *Defendant(s).*

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Superior Court of California,
County of Los Angeles
10/25/2024 2:39 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By C. Vega, Deputy Clerk

Case No. **24STCV28018**

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 Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203); and
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.)

JURY TRIAL DEMANDED



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Los Angeles, CA 90067

ADDITIONAL ATTORNEY(S) FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
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1 Plaintiff, Maria Jacqueline Batres (hereafter “Plaintiff” or “Batres”), on behalf of herself
2 and all others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants Dimension Development
7 Company, Inc., a Louisiana corporation, Dr Hotel Employee Leasing, LLC, a Delaware limited
8 liability company, Dimension Development Two, LLC, a Louisiana limited liability company,
9 and Does 1 through 50, inclusive (collectively “Defendants”).

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

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

15 (B) Provide all meal periods;

16 (C) Authorize and permit all rest breaks;

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

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

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

20 (G) Timely pay wages upon termination of employment

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

23 **II. THE PARTIES**

24 3. Plaintiff Maria Jacqueline Batres is a resident of California.

25 4. Defendant Dimension Development Company, Inc. is a corporation organized and
26 existing under the laws of Louisiana and also a citizen of California based on Plaintiff’s
27 information and belief.

28 5. Defendant Dr Hotel Employee Leasing, LLC is a limited liability company



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1 organized and existing under the laws of Delaware and also a citizen of California based on
2 Plaintiff's information and belief.

3 6. Defendant Dimension Development Two, LLC is a limited liability company
4 organized and existing under the laws of Louisiana and also a citizen of California based on
5 Plaintiff's information and belief.

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

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

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

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

26 **III. CLASS ALLEGATIONS**

27 11. This action has been brought and may be maintained as a class action pursuant to
28 California Code of Civil Procedure section 382 because there is a well-defined community of



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1 interest among the persons who comprise the readily ascertainable class defined below and
2 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
3 a class action.

4 12. **Class Definition:** The Class is defined as follows: All persons Defendants
5 employed in California as hourly and non-exempt, including housekeepers and room and suite
6 attendants, individuals performing work comparable to the aforementioned, compensated
7 comparably to the aforementioned, and individuals in similar positions, at any time during the
8 period beginning four years prior to the filing of this action and ending on the date that final
9 judgment is entered in this action (“Class” or “Class Members”).

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

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

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

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

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

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

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



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

3 F. 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 G. 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 public housekeeping
4 industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The
5 Wage Order defines "Public Housekeeping Industry" to mean

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

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

24
25 Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants,
26 Batres, and all of the Class Members were covered by the Wage Order because the Defendants
27 operated, and Batres, and all of the Class Members, worked for one or more hotels. Accordingly,
28 Batres and all of the other Class Members are entitled to the protections the Wage Order provides.



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1 21. On approximately February 8, 2022, the Defendants began to employ Batres in
2 Pasadena in the position of housekeeper and a room and suite attendant. The Defendants
3 continuously employed her in that capacity until on or about May 29, 2024 when her employment
4 ended.

5 22. At all relevant times, the Defendants issued wages to Batres and all of the other
6 Class Members on a semimonthly (24 paychecks/year) basis and paid them by the hour. At all
7 relevant times, the Defendants classified Batres and all of the other Class Members as non-exempt
8 employees entitled to the protections of the Labor Code and the Wage Order.

9 23. At all relevant times, the Defendants failed to compensate Batres and all of the
10 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
11 Defendants required Batres and the other Class Members to perform work, including cleaning
12 utensils and preparing cleaning carts, before clocking in and to work through meal periods, though
13 the Defendants did not pay Batres and the other Class Members for the time.

14 24. At all relevant times, the Defendants failed to compensate Batres and all of the
15 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
16 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
17 required Batres and the other Class Members to work over eight hours per day, over 40 hours per
18 week, and on the seventh day of the same workweek. During these days and weeks, the
19 Defendants required Batres and the other Class Members to perform work, including cleaning
20 utensils and preparing cleaning carts, before clocking in and to work through meal periods, though
21 the Defendants did not pay Batres and the other Class Members for the time. The Defendants also
22 paid Batres and the other Class Members for overtime hours at their regular rates of pay.

23 25. At all relevant times, the Defendants failed to provide Batres and all of the other
24 Class Members with all timely 30-minute, off-duty meal periods. The Defendants were under-
25 staffed. They required Batres and the other Class Members to complete more time-sensitive tasks
26 in a workday than they could without working through meal periods. They also required Batres
27 and the other Class Members to complete more time-sensitive tasks in a workday than they could
28 without taking meal periods within the first five hours of work or a second meal period on days



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1 they worked in excess of 10 hours. The Defendants also failed to pay premium wages for days on
2 which failed to provide Batres and all of the other Class Members with meal periods as required
3 by law.

4 26. At all relevant times, the Defendants failed to authorize and permit Batres and all
5 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
6 or major portion thereof. The Defendants were under-staffed. They required Batres and the other
7 Class Members to complete more time-sensitive tasks in a workday than they could without
8 working through rest periods. They also required Batres and the other Class Members to complete
9 more time-sensitive tasks in a workday than they could without taking rest periods within the first
10 three and one half hours of work or a third rest period on days they worked in excess of 10 hours.
11 The Defendants also failed to pay premium wages for days on which failed to authorize and
12 permit Batres and all of the other Class Members to take rest breaks as required by law.

13 27. At all relevant times, the Defendants failed to issue to Batres and all of the other
14 Class Members complete and accurate wage statements that state all hours worked at the correct
15 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
16 the wage statements they issued to Batres and all of the other Class Members the unpaid wages
17 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
18 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
19 wages earned, and related information.

20 28. At all relevant times, the Defendants failed to maintain accurate employee records
21 of Batres and all of the other Class Members.

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

- 24 A. Not provided with all off duty meal periods;
25 B. Not authorized and permitted to take all rest break periods;
26 C. Not paid one hour's pay for each workday in which Defendants failed to
27 authorize and permit them to take one or more timely rest periods;
28 D. Not paid one hour's pay for each workday in which Defendants failed to



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1 provide them with one or more timely meal periods;

2 E. Not paid all wages earned, including, but not limited to, minimum, regular,
3 and overtime wages for work performed while clocked out;

4 F. Not provided with accurate and complete wage statements; and

5 G. Not timely paid all earned and unpaid wages at the time their employment
6 ended.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

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

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

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

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

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

15 32. 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 33. Section 3 of the Wage Order states:

19 (A) Daily Overtime - General Provisions

20 (1) The following overtime provisions are applicable to
21 employees 18 years of age or over and to employees 16 or
22 17 years of age who are not required by law to attend
23 school and are not otherwise prohibited by law from
24 engaging in the subject work. Such employees shall not be
employed more than eight (8) hours in any workday or
more than 40 hours in any workweek unless the employee
receives one and one-half (1 ½) times such employee’s
regular rate of pay for all hours worked over 40 hours in
the workweek. Eight (8) hours of labor constitutes a day’s
work. Employment beyond eight (8) hours in any workday
or more than six (6) days in any workweek is permissible
provided the employee is compensated for such overtime
at not less than:



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- 1 (a) One and one-half (1 ½) times the employee's
2 regular rate of pay for all hours worked in excess of
3 eight (8) hours up to and including 12 hours in any
4 workday, and for the first eight (8) hours worked on
5 the seventh (7th) consecutive day of work in a
6 workweek.
7 (b) Double the employee's regular rate of pay for all
8 hours worked in excess of 12 hours in any workday
9 and for all hours worked in excess of eight (8) hours
10 on the seventh (7th) consecutive day of work in a
11 workweek.
12 (c) The overtime rate of compensation required to be
13 paid to a nonexempt full-time salaried employee
14 shall be computed by using the employee's regular
15 hourly salary as one-fortieth (1/40) of the
16 employee's weekly salary.

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

20 35. Labor Code section 510 states:

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

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

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



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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
meal period may be waived by mutual consent of both the
employer and employee.

5 An employer shall not employ an employee for a work period of
6 more than 10 hours per day without providing the employee with
7 a second meal period of not less than 30 minutes, except that if the
8 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.

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

10 **Meal Periods**

11 (A) No employer shall employ any person for a work period of
12 more than five (5) hours without a meal period of not less
13 than 30 minutes, except that when a work period of not
14 more than six (6) hours will complete the day's work the
15 meal period may be waived by mutual consent of the
16 employee and the employee. Unless the employee is
17 relieved of all duty during a 30 minute meal period, the
18 meal period shall be considered an 'on duty' meal period
19 and counted as time worked. An 'on duty' meal period shall
20 be permitted only when the nature of the work prevents an
21 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.

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

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

26 (b) An employer shall not require an employee to work during
27 a meal or rest period mandated pursuant to an applicable
28 statute, or applicable regulation, standard, or order of the



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Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

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

49. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants were under-staffed. They required Batres and the other Class Members to complete more time-sensitive tasks in a workday than they could without working through meal periods. They also required Batres and the other Class Members to complete more time-sensitive tasks in a workday than they could without taking meal periods within the first five hours of work or a second meal period on days they worked in excess of 10 hours.

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

51. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal



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1 periods required by California law.

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

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

8 **THIRD CAUSE OF ACTION**

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

10 **Lab. Code § 226.7**

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

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

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

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

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

22 57. In relevant part, Section 12 of the Wage Order states:

23 **Rest Periods**

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



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

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

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

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

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

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

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

62. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major



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1 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
2 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
3 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
4 to authorize and permit them to take 10-minute rest periods every four hours worked or major
5 fraction thereof.

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

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **Lab. Code § 226**

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

5 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
6 **STATEMENTS**

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

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

11 A. Gross wages earned;

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

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

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

19 E. Net wages earned;

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

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

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

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

28 70. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
the employer fails to provide accurate and complete information as required by California Labor



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Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

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

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

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

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

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

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

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



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1 earned, all meal period premium wages earned, and all rest break premium wages earned.

2 73. Defendants' failure to provide Plaintiff and the other Class Members with accurate
3 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
4 the other Class Members with accurate wage statements but intentionally provided wage
5 statements that Defendants knew were not accurate.

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

16 **FIFTH CAUSE OF ACTION**

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

18 **(Lab. Code §§ 201, 201.3, 202, and 203)**

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

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

21 76. At all relevant times during the applicable limitations period, Plaintiffs and the
22 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
23 of California Labor Code §§ 201, 201.3, 202, and 203, and the Wage Order.

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

26 78. Labor Code § 201.3 requires temporary services employers to pay the earned
27 employee's wages on a weekly basis. Defendants paid Plaintiff and all Class Members regularly,
28 but that pay did not include all earned wages on a weekly basis.



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

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

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

13 89. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
14 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
15 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

16 **V. PRAYER FOR RELIEF**

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

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

21 B. An order that Plaintiff be appointed class representative;

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

23 D. Unpaid wages, including minimum, regular, overtime, missed meal period,
24 and missed rest period wages;

25 E. Liquidated damages;

26 F. Statutory penalties, including waiting time penalties;

27 G. Restitution;

28 H. Declaratory relief;



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- 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: October 24, 2024

By: 

DAVID G. SPIVAK
Attorney for Plaintiff(s), MARIA
JACQUELINE BATRES, and all
others similarly situated



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EXHIBIT 4

1 DAVID G. SPIVAK (SBN 179684)
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7 Attorneys for Plaintiff(s),
8 MARIA JACQUELINE BATRES, and all others similarly situated
9 (Additional attorneys for Plaintiff(s) on next page)

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

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

17 *Plaintiff(s),*

18 vs.

19 DIMENSION DEVELOPMENT COMPANY,
20 INC., a Louisiana corporation; DR HOTEL
21 EMPLOYEE LEASING, LLC, a Delaware
22 limited liability company; DIMENSION
23 DEVELOPMENT TWO, LLC, a Louisiana
24 limited liability company; and DOES 1–50,
inclusive,

25 *Defendant(s).*

FILED
Superior Court of California
County of Los Angeles
12/30/2024

David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

Case No. 24STCV28018

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.);
7. Civil Penalties (Lab. Code §§ 2898, et seq.)

JURY TRIAL DEMANDED



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1 Plaintiff, Maria Jacqueline Batres (hereafter “Plaintiff” or “Batres”), on behalf of herself
2 and 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 Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class action for alleged violations of the California Labor
7 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the
8 California Business and Professions Code against Defendants Dimension Development
9 Company, Inc., a Louisiana corporation, Dr Hotel Employee Leasing, LLC, a Delaware limited
10 liability company, Dimension Development Two, LLC, a Louisiana limited liability company,
11 and Does 1 through 50, inclusive (collectively “Defendants”).

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

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

17 (B) Provide all meal periods;

18 (C) Authorize and permit all rest breaks;

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

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

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

22 (G) Timely pay wages upon termination of employment

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

26 **II. THE PARTIES**

27 3. Plaintiff Maria Jacqueline Batres is a resident of California. At all relevant times,
28 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations § 11050



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1 and an “aggrieved employee” within the meaning of Labor Code § 2699 (c).

2 4. Defendant Dimension Development Company, Inc. is a corporation organized and
3 existing under the laws of Louisiana and also a citizen of California based on Plaintiff’s
4 information and belief.

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

8 6. Defendant Dimension Development Two, LLC is a limited liability company
9 organized and existing under the laws of Louisiana and also a citizen of California based on
10 Plaintiff’s information and belief.

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

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

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

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



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1 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
2 described class in accordance with applicable laws as alleged herein.

3 **III. CLASS ALLEGATIONS**

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

9 12. **Class Definition:** The Class is defined as follows: All persons Defendants
10 employed in California as hourly and non-exempt, including housekeepers and room and suite
11 attendants, individuals performing work comparable to the aforementioned, compensated
12 comparably to the aforementioned, and individuals in similar positions, at any time during the
13 period beginning four years prior to the filing of this action and ending on the date that final
14 judgment is entered in this action (“Class” or “Class Members”).

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

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

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

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

28 B. Whether Defendants failed to provide the Class Members with all meal



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1 periods in compliance with California law;

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

4 D. Whether Defendants knowingly and intentionally failed to provide the
5 class with accurate and complete itemized wage statements;

6 E. Whether Defendants willfully failed to provide the class with timely final
7 wages;

8 F. 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 G. 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 16. **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 17. **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 18. **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 19. **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 20. The Wage Order applies to “all persons employed in the public housekeeping
9 industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The
10 Wage Order defines "Public Housekeeping Industry" to mean

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

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



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

5
6 21. On approximately February 8, 2022, the Defendants began to employ Batres in
7 Pasadena in the position of housekeeper and a room and suite attendant. The Defendants
8 continuously employed her in that capacity until on or about May 29, 2024 when her employment
9 ended.

10 22. At all relevant times, the Defendants issued wages to Batres and all of the other
11 Class Members on a semimonthly (24 paychecks/year) basis and paid them by the hour. At all
12 relevant times, the Defendants classified Batres and all of the other Class Members as non-exempt
13 employees entitled to the protections of the Labor Code and the Wage Order.

14 23. At all relevant times, the Defendants failed to compensate Batres and all of the
15 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
16 Defendants required Batres and the other Class Members to perform work, including cleaning
17 utensils and preparing cleaning carts, before clocking in and to work through meal periods, though
18 the Defendants did not pay Batres and the other Class Members for the time.

19 24. At all relevant times, the Defendants failed to compensate Batres and all of the
20 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
21 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
22 required Batres and the other Class Members to work over eight hours per day, over 40 hours per
23 week, and on the seventh day of the same workweek. During these days and weeks, the
24 Defendants required Batres and the other Class Members to perform work, including cleaning
25 utensils and preparing cleaning carts, before clocking in and to work through meal periods, though
26 the Defendants did not pay Batres and the other Class Members for the time. The Defendants also
27 paid Batres and the other Class Members for overtime hours at their regular rates of pay.

28 25. At all relevant times, the Defendants failed to provide Batres and all of the other



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1 Class Members with all timely 30-minute, off-duty meal periods. The Defendants were under-
2 staffed. They required Batres and the other Class Members to complete more time-sensitive tasks
3 in a workday than they could without working through meal periods. They also required Batres
4 and the other Class Members to complete more time-sensitive tasks in a workday than they could
5 without taking meal periods within the first five hours of work or a second meal period on days
6 they worked in excess of 10 hours. The Defendants also failed to pay premium wages for days on
7 which failed to provide Batres and all of the other Class Members with meal periods as required
8 by law.

9 26. At all relevant times, the Defendants failed to authorize and permit Batres and all
10 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
11 or major portion thereof. The Defendants were under-staffed. They required Batres and the other
12 Class Members to complete more time-sensitive tasks in a workday than they could without
13 working through rest periods. They also required Batres and the other Class Members to complete
14 more time-sensitive tasks in a workday than they could without taking rest periods within the first
15 three and one half hours of work or a third rest period on days they worked in excess of 10 hours.
16 The Defendants also failed to pay premium wages for days on which failed to authorize and
17 permit Batres and all of the other Class Members to take rest breaks as required by law.

18 27. At all relevant times, the Defendants failed to issue to Batres and all of the other
19 Class Members complete and accurate wage statements that state all hours worked at the correct
20 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
21 the wage statements they issued to Batres and all of the other Class Members the unpaid wages
22 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
23 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
24 wages earned, and related information.

25 28. At all relevant times, the Defendants failed to maintain accurate employee records
26 of Batres and all of the other Class Members.

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



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- 1 A. Not provided with all off duty meal periods;
- 2 B. Not authorized and permitted to take all rest break periods;
- 3 C. Not paid one hour's pay for each workday in which Defendants failed to
- 4 authorize and permit them to take one or more timely rest periods;
- 5 D. Not paid one hour's pay for each workday in which Defendants failed to
- 6 provide them with one or more timely meal periods;
- 7 E. Not paid all wages earned, including, but not limited to, minimum, regular,
- 8 and overtime wages for work performed while clocked out;
- 9 F. Not provided with accurate and complete wage statements; and
- 10 G. Not timely paid all earned and unpaid wages at the time their employment
- 11 ended.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

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

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

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

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

18 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**

19 **THE CORRECT RATES OF PAY**

20 32. 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 33. Section 3 of the Wage Order states:

24 **(A) Daily Overtime - General Provisions**

- 25 (1) The following overtime provisions are applicable to
- 26 employees 18 years of age or over and to employees 16 or
- 27 17 years of age who are not required by law to attend
- 28 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



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1 more than 40 hours in any workweek unless the employee
2 receives one and one-half (1 ½) times such employee's
3 regular rate of pay for all hours worked over 40 hours in
4 the workweek. Eight (8) hours of labor constitutes a day's
5 work. Employment beyond eight (8) hours in any workday
6 or more than six (6) days in any workweek is permissible
7 provided the employee is compensated for such overtime
8 at not less than:

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

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

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

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

28 35. Labor Code section 510 states:

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



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1 The maximum hours of work and the standard conditions of labor fixed by the
2 commission shall be the maximum hours of work and the standard conditions of
3 labor for employees. The employment of any employee for longer hours than those
4 fixed by the order or under conditions of labor prohibited by the order is unlawful.

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

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

10 An employer shall not employ an employee for a work period of
11 more than 10 hours per day without providing the employee with
12 a second meal period of not less than 30 minutes, except that if the
13 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.

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

15 **Meal Periods**

16 (A) No employer shall employ any person for a work period of
17 more than five (5) hours without a meal period of not less
18 than 30 minutes, except that when a work period of not
19 more than six (6) hours will complete the day's work the
20 meal period may be waived by mutual consent of the
21 employee and the employee. Unless the employee is
22 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.

23 (B) If an employer fails to provide an employee a meal period
24 in accordance with the applicable provisions of this Order,
25 the employer shall pay the employee one (1) hour of pay at
26
27
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the employee's regular rate of compensation for each work day that the meal period is not provided.

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

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

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

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

49. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants were under-staffed. They required Batres and the other Class Members to complete more time-sensitive tasks in a workday than they could without working through meal periods. They also required Batres and the other Class Members to complete more time-sensitive tasks in a workday than they could without taking meal periods within the first five hours of work or a second meal period on days they worked in excess of 10 hours.

50. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants



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1 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
2 Members with timely meal periods.

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

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

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

13 **THIRD CAUSE OF ACTION**

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

15 **Lab. Code § 226.7**

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

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

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

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

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

25 57. In relevant part, Section 12 of the Wage Order states:

26 **Rest Periods**

27
28 (A) Every employer shall authorize and permit all employees
to take rest periods, which insofar as practicable shall be in the



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1 middle of each work period. The authorized rest period time shall
2 be based on the total hours worked daily at the rate of ten (10)
3 minutes net rest time per four (4) hours or major fraction thereof.
4 However, a rest period need not be authorized for employees
5 whose total daily work time is less than three and one-half (3 1/2)
6 hours. Authorized rest period time shall be counted as hours
7 worked for which there shall be no deduction from wages.

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 work day that
12 the rest period is not provided.

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

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

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

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

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

35 61. At all relevant times, Defendants failed to authorize and permit Plaintiff and the



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1 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
2 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
3 Plaintiff and the other Class Members to take timely rest periods.

4 62. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
5 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
6 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
7 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
8 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
9 to authorize and permit them to take 10-minute rest periods every four hours worked or major
10 fraction thereof.

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

15 64. Defendants failed to provide Plaintiff with all required rest breaks in accordance
16 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
17 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
18 which resulted in Defendants not providing the Class Members with all rest breaks required by
19 California law.

20 65. Defendants failed to pay Plaintiff the additional wages required by California
21 Labor Code § 226.7 for all rest breaks not provided to himher. Plaintiff is informed and believes
22 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
23 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
24 providing the Class Members with additional wages for all rest breaks not provided to them as
25 required by California Labor Code § 226.7.

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



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

4
5 ///

6 **FOURTH CAUSE OF ACTION**
7 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

8 **Lab. Code § 226**

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

10 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
11 **STATEMENTS**

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

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

16 A. Gross wages earned;

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

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

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

24 E. Net wages earned;

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

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

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

 I. All applicable hourly rates in effect during the pay period and the



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1 corresponding number of hours worked at each hourly rate by the employee.

2 70. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
3 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
4 the employer fails to provide accurate and complete information as required by California Labor
5 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
6 alone one or more of the following:

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

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

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

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

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

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

22 72. As alleged herein, at all relevant times during the applicable limitations period,
23 Defendants violated California Labor Code section 226 because they did not properly and
24 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
25 the corresponding number of hours worked at each rate by the employee and other requirements
26 of California Labor Code section 226. Defendants failed to state in the wage statements they
27 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
28 including, but not limited to, regular and overtime wages for work they performed off-the-clock



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1 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
2 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
3 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
4 Members that state all minimum wages earned, all regular wages earned, all overtime wages
5 earned, all meal period premium wages earned, and all rest break premium wages earned.

6 73. Defendants' failure to provide Plaintiff and the other Class Members with accurate
7 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
8 the other Class Members with accurate wage statements but intentionally provided wage
9 statements that Defendants knew were not accurate.

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

20 **FIFTH CAUSE OF ACTION**

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

22 **(Lab. Code §§ 201, 201.3, 202, and 203)**

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

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

25 76. At all relevant times during the applicable limitations period, Plaintiffs and the
26 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
27 of California Labor Code §§ 201, 201.3, 202, and 203, and the Wage Order.

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



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

2 78. Labor Code § 201.3 requires temporary services employers to pay the earned
3 employee's wages on a weekly basis. Defendants paid Plaintiff and all Class Members regularly,
4 but that pay did not include all earned wages on a weekly basis.

5 79. Labor Code § 202 provides that all earned and unpaid wages of an employee who
6 quits after providing at least 72-hours notice before quitting are due and payable at the time of
7 quitting and that all earned and unpaid wages of an employee who quits without providing at least
8 72-hours notice before quitting are due and payable within 72 hours.

9 80. The Defendants failed to pay Batres and all of the other Class Members whose
10 employment ended all of the earned but unpaid wages described above by the conclusion of their
11 employment with Batres, including minimum wages, regular wages, overtime wages, unprovided
12 meal period premium wages, unprovided rest break premium wages.

13 81. By failing to pay such earned wages to Plaintiff and the Class Members,
14 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
15 § 201, § 201.3, or § 202.

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

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

24 **SIXTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

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

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

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



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1 92. Labor Code § 204 states

2 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
3 or 204.2, earned by any person in any employment are due and payable twice
4 during each calendar month, on days designated in advance by the employer as the
5 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
6 calendar month shall be paid for between the 16th and the 26th day of the month
7 during which the labor was performed, and labor performed between the 16th and
8 the last day, inclusive, of any calendar month, shall be paid for between the 1st
9 and 10th day of the following month. ...

10 (b) (1) Notwithstanding any other provision of this section, all wages
11 earned for labor in excess of the normal work period shall be paid no later than the
12 payday for the next regular payroll period.

13 (2) An employer is in compliance with the requirements of subdivision (a) of
14 Section 226 relating to total hours worked by the employee, if hours worked in
15 excess of the normal work period during the current pay period are itemized as
16 corrections on the paystub for the next regular pay period. Any corrections set out
17 in a subsequently issued paystub shall state the inclusive dates of the pay period
18 for which the employer is correcting its initial report of hours worked.

19 (c) However, when employees are covered by a collective bargaining
20 agreement that provides different pay arrangements, those arrangements shall
21 apply to the covered employees.

22 (d) The requirements of this section shall be deemed satisfied by the payment
23 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
24 more than seven calendar days following the close of the payroll period.

25 93. Defendants paid wages to employees on regular intervals. Defendants, however,
26 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
27 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
28 intervals for all wages earned and all hours worked.

 94. During the applicable time period, Defendants violated California Labor Code §§
201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

 95. 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.

 96. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the
Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations



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1 of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and
2 1198 during the applicable limitations period in the following amounts:

3 A. For violations of California Labor Code § 204, one hundred dollars
4 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
5 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
(penalty amounts established by California Labor Code § 210).

6 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
7 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
8 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
9 California Labor Code § 226.3).

10 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
11 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
12 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
13 established by California Labor Code § 558).

14 D. For violations of California Labor Code § 1174, five hundred dollars
15 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
16 amounts established by Labor Code § 1174.5).

17 E. For violations of California Labor Code § 1197, one hundred dollars
18 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
19 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
20 (regardless of whether the initial violations were intentionally committed) (penalty amounts
established by California Labor Code § 1197.1).

21 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and
22 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
23 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
24 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

25 97. Plaintiff has complied with the procedures for bringing suit specified in California
26 Labor Code § 2699.3. By letter dated October 24, 2024, Plaintiff filed written notice online with
27 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
28 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
violated, including the facts and theories to support the alleged violations. A true and correct copy



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1 of the notice to the LWDA dated October 24, 2024 is attached as Exhibit A. Plaintiff submitted
2 his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
3 response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the
4 LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate
5 these allegations.

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

9 **V. PRAYER FOR RELIEF**

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

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

14 B. An order that Plaintiff be appointed class representative;

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

16 D. Unpaid wages, including minimum, regular, overtime, missed meal period,
17 and missed rest period wages;

18 E. Liquidated damages;

19 F. Statutory penalties, including waiting time penalties;

20 G. Civil penalties;

21 H. Restitution;

22 I. Declaratory relief;

23 J. Actual damages;

24 K. Pre-judgment interest;

25 L. Costs of suit;

26 M. Reasonable attorneys' fees; and

27 N. Such other relief as the Court deems just and proper.

28 **VI. DEMAND FOR JURY TRIAL**

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



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1 all issues so triable.

2 Respectfully submitted,

3
4 THE SPIVAK LAW FIRM

5 Dated: December 30, 2024

6 By: 

7 DAVID G. SPIVAK
8 LAUREN R. DAVIS,
9 Attorneys for Plaintiff(s),
10 MARIA JACQUELINE
11 BATRES, and all others
12 similarly situated
13
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EXHIBIT A



THE SPIVAK LAW FIRM

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SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

October 24, 2024

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

Re: Maria Jacqueline Batres / Dimension Hospitality

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Maria Jacqueline Batres (hereafter “Batres” or “Complainant”) provides notice that Dr Hotel Employee Leasing, LLC, a Delaware limited liability company, Dimension Development Company, Inc., a Louisiana corporation, Dimension Development Two, LLC, a Louisiana limited liability company, and related entities (collectively “the Dr Hotel Employers” or “the Employers”) violated her rights and those of all other individuals the Dr Hotel Employers have employed or otherwise contracted with in California as hourly, non-exempt, including housekeepers and room and suite attendants, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 201.3, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and other Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Batres hereby provides this notice to the Labor & Workforce Development Agency and the Dr Hotel Employers and their agents and representatives.

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

///
///

Statement of Facts

On approximately February 3, 2021, the Dr Hotel Employers began to employ Batres in Pasadena in the position of housekeeper and a room and suite attendant. The Dr Hotel Employers continuously employed her in that capacity until on or about May 29, 2024 when her employment ended.

At all relevant times, the Dr Hotel Employers issued wages to Batres and all of the other Aggrieved Employees on a semimonthly (24 paychecks/year) basis and paid them by the hour. At all relevant times, the Dr Hotel Employers classified Batres and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. Though the Dr Hotel Employers were temp employers, they did not pay Batres and the other Aggrieved Employees on a weekly basis as required by law.

The Dr Hotel Employers failed to compensate Batres 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 Dr Hotel Employers required Batres and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. During these days and weeks, the Dr Hotel Employers required Batres and the other Aggrieved Employees to perform work, including cleaning utensils and preparing cleaning carts, before clocking in and to work through meal periods, though the Dr Hotel Employers did not pay Batres and the other Aggrieved Employees for the time. The Dr Hotel Employers also paid Batres and the other Aggrieved Employees for overtime hours at their regular rates of pay.

At all relevant times, the Dr Hotel Employers failed to provide Batres and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Dr Hotel Employers were under-staffed. They required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without working through meal periods. They also required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without taking meal periods within the first five hours of work or a second meal period on days they worked in excess of 10 hours. The Dr Hotel Employers also failed to pay premium wages for days on which they failed to provide Batres and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Dr Hotel Employers failed to authorize and permit Batres and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Dr Hotel Employers were under-staffed. They required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without working through rest periods. They also required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without taking rest periods within the first three and one half hours of work or a third rest period on days they worked in excess of 10 hours. The Dr Hotel Employers also failed to pay premium wages for days on which they failed to authorize and permit Batres and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Dr Hotel Employers failed to issue to Batres 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 Dr Hotel Employers knowingly and intentionally failed to state on the wage statements they issued to Batres 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 doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

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

The Dr Hotel Employers failed to maintain accurate employee records of Batres and all of the other Aggrieved Employees.

For the reasons stated herein, Batres 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 Dr Hotel Employers failed to pay Batres and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Dr Hotel Employers failed to provide Batres and all of the other Aggrieved Employees all meal periods in compliance with California law;

- (c) The Dr Hotel Employers failed to authorize and permit Batres and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Dr Hotel Employers failed to compensate Batres and all of the other Aggrieved Employees at one hour's pay for each day in which the Dr Hotel Employers failed to provide them with one or more meal periods as required by law;
- (e) The Dr Hotel Employers failed to compensate Batres and all of the other Aggrieved Employees at one hour's pay for each day in which the Dr Hotel Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Dr Hotel Employers knowingly and intentionally failed to provide Batres and all of the other Aggrieved Employees with complete and accurate wage statements;
- (g) The Dr Hotel Employers willfully failed to timely pay Batres and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Dr Hotel Employers and when their employment ended; and
- (h) The Dr Hotel Employers failed to maintain accurate employment records pertaining to Batres and all of the other Aggrieved Employees.

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

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The Wage Order

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

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

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

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Dr Hotel Employers, Batres, and all of the Aggrieved Employees were covered by the

Wage Order because the Dr Hotel Employers operated, and Batres, and all of the Aggrieved Employees, worked for one or more hotels. Accordingly, Batres and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of

eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

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

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

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

The Dr Hotel Employers required Batres and the other Aggrieved Employees to perform work, including cleaning utensils and preparing cleaning carts, before clocking in and to work through meal periods, though the Dr Hotel Employers did not pay Batres and the other Aggrieved Employees for the time.

The Dr Hotel Employers required Batres and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. During these days and weeks, the Dr Hotel Employers required Batres and the other Aggrieved Employees to perform work, including cleaning utensils and preparing cleaning carts, before clocking in and to work through meal periods, though the Dr Hotel Employers did not pay Batres and the other Aggrieved Employees for the time. The Dr Hotel Employers also paid Batres and the other Aggrieved Employees for overtime hours at their regular rates of pay.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Merry Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Dr Hotel Employers, Batres and all of the other Aggrieved Employees earned awards during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Dr Hotel Employers failed to pay to Batres and all of the other Aggrieved Employees overtime and double time premium pay on such awards, and other non-discretionary compensation.

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

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

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

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable

statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

The Dr Hotel Employers failed to authorize and permit Batres 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 Dr Hotel Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Dr Hotel Employers were under-staffed. They required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without working through rest periods. They also required Batres and the other Aggrieved Employees to complete more time-sensitive tasks in a workday than they could without taking rest periods within the first three and one half hours of work or a third rest period on days they worked in excess of 10 hours. Moreover, the Dr Hotel Employers failed to pay Batres and all of the other Aggrieved Employees premium wages on workdays the Dr Hotel Employers failed to provide Batres and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Batres now seeks civil penalties for these Labor Code violations that the Dr Hotel 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 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 Employer 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 Dr Hotel 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 Dr Hotel Employers failed to state in the wage statements they issued to Batres and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Dr Hotel Employers knowingly and intentionally failed to state on the wage statements they issued to Batres and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

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

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

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

The Dr Hotel Employers failed to compensate Batres and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the Dr Hotel Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Batres now seeks civil penalties for the Labor Code violations that the Dr Hotel 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 Dr Hotel Employers failed to pay Batres 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 Batres, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. By failing to pay Batres and all of the other

Aggrieved Employees as set forth above at the end of employment, the Dr Hotel Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Batres seeks civil penalties from the Dr Hotel Employers as follows:

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

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with

rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

/ / /

LWDA / The Dr Hotel Employers
Re: Maria Jacqueline Batres
October 24, 2024
Page 20 of 20

Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Ms. Maria Jacqueline Batres

Mr. Walter L. Haines, Esq.

Dimension Development Two, LLC
c/o Agent for service of process
1505 Corporation CSC - Lawyers Incorporating Service
2710 Gateway Oaks Dr,
Sacramento, CA 95833

Dimension Development Company, Inc.
c/o Agent for service of process
1505 Corporation C T Corporation System
330 N Brand Blvd,
Glendale, CA 91203

Dr Hotel Employee Leasing, LLC
c/o Agent for service of process
1505 Corporation Corpdirect Agents, Inc.
330 N Brand Blvd,
Glendale, CA 91203

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

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

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

10 On Monday, December 30, 2024, I served the foregoing document described
11 as **PLAINTIFF'S FIRST AMENDED COMPLAINT** on interested parties by placing a true
and correct copy thereof enclosed in a sealed envelope, with postage fully
prepaid, addressed as follows:

12 **ATTORNEY FOR DEFENDANTS**

13 **Shareef S. Farag, Esq.**

14 **Nicholas D. Poper, Esq.**

15 **Matthew Goodman, Esq.**

16 **Matthew Eaton, Esq.**

17 **BAKER & HOSTETLER LLP**

18 **1900 Avenue of the Stars, Suite 2700**

19 **Los Angeles, CA 90067-4301**

20 ***sfarag@bakerlaw.com***

21 ***npoper@bakerlaw.com***

22 ***mgoodman@bakerlaw.com***

23 ***meaton@bakerlaw.com***

24 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
25 electronic service addresses listed above from my electronic service address
26 lizzett@spivaklaw.com.

27 EXECUTED on Monday, December 30, 2024, at Riverside, California.

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

24 
25 _____
LIZZETT CORIEZ

EXHIBIT 5

SHAREEF S. FARAG, SBN 251650
NICHOLAS D. POPER, SBN 293900
MATTHEW J. GOODMAN, SBN 316286
MATTHEW P. EATON, SBN 353597
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Attorneys for Defendants
DIMENSION DEVELOPMENT COMPANY, INC.,
DIMENSION DEVELOPMENT TWO, LLC, and
DR HOTEL EMPLOYEE LEASING, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MARIA JACQUELINE BATRES, on behalf
of herself and all others similarly situated, and
the general public,

Plaintiffs,

v.

DIMENSION DEVELOPMENT COMPANY,
INC., a Louisiana corporation; DR HOTEL
EMPLOYEE LEASING, LLC, a Delaware
limited liability company; DIMENSION
DEVELOPMENT TWO, LLC, a Louisiana
limited liability company; and DOES 1–50,
inclusive,

Defendants.

Case No.: 24STCV28018

*Assigned for All Purposes to Hon. Elaine
Lu, Dept. 9*

**DEFENDANTS' ANSWER TO
PLAINTIFF'S UNVERIFIED FIRST
AMENDED COMPLAINT**

Complaint Filed: October 25, 2024
FAC Filed: December 30, 2024

1 Defendants DIMENSION DEVELOPMENT COMPANY, INC., DIMENSION
2 DEVELOPMENT TWO, LLC, and DR HOTEL EMPLOYEE LEASING, LLC (“DR Hotel”)
3 (collectively, “Defendants”) hereby answer Plaintiff MARIA JACQUELINE BATRES’s
4 (“Plaintiff”) unverified First Amended Complaint (“FAC”) as follows:

5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure § 431.30(d), Defendants deny each and
7 every allegation contained in Plaintiff’s FAC and further deny that Plaintiff, any of the putative
8 class members Plaintiff seeks to represent, and/or any allegedly aggrieved employees have been
9 injured or damaged in the amount alleged, or at all. Defendants also deny that they are liable to
10 Plaintiff, the putative class members, and/or any allegedly aggrieved employees in any amount or
11 manner whatsoever.

12 **AFFIRMATIVE DEFENSES**

13 Defendants assert and allege each of the affirmative defenses set forth below.

14 **FIRST AFFIRMATIVE DEFENSE**

15 **(Failure to State a Claim)**

16 1. The purported causes of action in the FAC fail to include facts sufficient to state a
17 cause of action upon which relief may be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Arbitration Agreement)**

20 2. Plaintiff is limited in representing the putative class members and/or allegedly
21 aggrieved employees to the extent that putative class members and/or allegedly aggrieved
22 employees entered into agreements to arbitrate any claims, disputes, or disagreements with
23 Defendants on an individual basis only, including the claims alleged in the FAC.

24 **THIRD AFFIRMATIVE DEFENSE**

25 **(Release)**

26 3. The purported causes of action in the FAC are barred, in whole or in part, to the
27 extent they have been released by Plaintiff, the putative class members, and/or the allegedly
28 aggrieved employees.

FOURTH AFFIRMATIVE DEFENSE

(Improper Joinder)

4. Defendants DIMENSION DEVELOPMENT COMPANY, INC. and DIMENSION DEVELOPMENT TWO, LLC never employed Plaintiff, the putative class members, and/or the allegedly aggrieved employees during the relevant time period. Accordingly, Plaintiff has improperly joined Defendants DIMENSION DEVELOPMENT COMPANY, INC. and DIMENSION DEVELOPMENT TWO, LLC as parties to this action.

FIFTH AFFIRMATIVE DEFENSE

(Not a Proper Class Action)

5. Any recovery on the class allegations in the FAC is barred because Plaintiff has failed to identify a proper and ascertainable class of plaintiffs. Additionally, Plaintiff is not an adequate representative of any putative class of plaintiffs; her claims are not typical; common questions of law or fact affecting the individual members of the class do not predominate; and/or a class action is neither manageable nor superior.

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

6. The purported causes of action alleged in the FAC are barred, in whole or in part, by the applicable limitations period provided by law, including, but not limited to, that set forth in California Code of Civil Procedure §§ 338 and 340, and in California Business and Professions Code § 17208.

SEVENTH AFFIRMATIVE DEFENSE

(Doctrine of Avoidable Consequences)

7. Any potential recovery by Plaintiff, the putative class members, and/or the allegedly aggrieved employees is barred or, at a minimum, limited by the doctrine of avoidable consequences.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver of Meal Breaks)

8. The purported Second Cause of Action alleged in the FAC is barred, in whole or in part, to the extent that Plaintiff, the putative class and/or the allegedly aggrieved employees were

1 provided the opportunity to take meal periods which they voluntarily did not take on a timely or
2 complete basis.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Good Faith Dispute/Belief)**

5 9. The purported Fourth and Fifth Causes of Action alleged in the FAC for alleged
6 violations of California Labor Code §§ 201-203 and 226 are barred, in whole or in part, because,
7 at all relevant times, Defendants did not willfully, knowingly, and/or intentionally fail to comply
8 with any applicable provision of law, but rather, acted in good faith and had reasonable grounds to
9 believe that (1) Plaintiff, the putative class members, and/or any allegedly aggrieved employees
10 were paid all wages due during their employment with DR Hotel; and (2) Defendants were in
11 compliance with California Labor Code § 226 with respect to the conduct alleged. *See Naranjo v.*
12 *Spectrum Security Services, Inc.*, No. S279397 (May 6, 2024).

13 **TENTH AFFIRMATIVE DEFENSE**

14 **(Unclean Hands)**

15 10. The purported causes of action alleged in the FAC are barred, in whole or in part, to
16 the extent that Plaintiff, the putative class members, and/or the allegedly aggrieved employees
17 entered into this litigation with unclean hands.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Offset)**

20 11. Defendants are entitled to offset any amount awarded to Plaintiff, the putative class
21 members, and/or any allegedly aggrieved employees in this action against: (1) all overpayments of
22 compensation, if any, to Plaintiff, the putative class members, and/or the allegedly aggrieved
23 employees; (2) other sums that Plaintiff, the putative class members, and/or any allegedly aggrieved
24 employees received during the course of their employment to which they were not entitled, if any;
25 and (3) all other amounts that may lawfully be deducted from any amount awarded to Plaintiff, the
26 putative class members, and/or any allegedly aggrieved employees.

TWELFTH AFFIRMATIVE DEFENSE

(Waiver and Estoppel)

12. Plaintiff, the putative class members, and/or the allegedly aggrieved employees, by their own actions, waived or otherwise elected to forego their rights, in whole or in part, with respect to the unlawful conduct alleged in the FAC and are now estopped from bringing this lawsuit based on such allegations.

THIRTEENTH AFFIRMATIVE DEFENSE

(Consent)

13. The purported causes of action in the FAC are barred, in whole or in part, because Plaintiff, the putative class members, and/or the allegedly aggrieved employees consented to the alleged improper conduct.

FOURTEENTH AFFIRMATIVE DEFENSE

(Injunction and Restitution Barred)

14. The purported Sixth Cause of Action alleged in the FAC for violations of California Business and Professions Code § 17200, *et seq.* and its injunctive and restitution remedies, are barred because Plaintiff and/or the putative class members have other adequate remedies at law available, such as monetary damages and/or penalties.

FIFTEENTH AFFIRMATIVE DEFENSE

(Laches)

15. The purported causes of action in the FAC are barred, in whole or in part, by the equitable doctrine of laches inasmuch as Plaintiff has inexcusably and unreasonably delayed the filing of this action causing prejudice to Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

(Substantial Compliance)

16. The purported causes of action alleged in the FAC are barred, in whole or in part, because Defendants substantially complied with the provisions of all relevant laws with respect to Plaintiff, the putative class members, and/or any allegedly aggrieved employees.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Due Process)

17. Plaintiff, the putative class members, and/or the allegedly aggrieved employees are precluded from recovering penalties from Defendants to the extent such remedies would violate Defendants' due process under the California and United States Constitutions.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Excessive Fines)

18. Plaintiff's purported Seventh Cause of Action alleged in the FAC is barred because an award of civil penalties under PAGA would result in the imposition of excessive fines in violation of the Eighth Amendment to the United States Constitution and Article I, Section 7 of the California Constitution.

NINETEENTH AFFIRMATIVE DEFENSE

(Duplicate Recovery)

19. Recovery of statutory and civil penalties in the FAC is barred, in whole or in part, to the extent any such penalties are derivative of other allegations in the FAC and would lead to impermissible duplicative recovery.

TWENTIETH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

20. Plaintiff's purported Seventh Cause of Action alleged in the FAC is barred, in whole or in part, to the extent Plaintiff failed to satisfy the notice and exhaustion requirements under PAGA, Labor Code § 2699 *et seq.*, or has otherwise failed to exhaust administrative remedies.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Reservation of Future Defenses)

21. Defendants reserve the right to amend this pleading to include further affirmative defenses.

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WHEREFORE, Defendants pray for judgment against Plaintiff as follows:

- (a) For an Order dismissing Plaintiff's claims with prejudice, and entering judgment in favor of Defendants;
- (b) For all reasonable costs and attorneys' fees incurred by Defendants in connection with the defense of this matter as available under the law; and
- (c) For such other relief as the Court deems just and proper.

Dated: April 3, 2025

BAKER & HOSTETLER LLP

By: /s/ Nicholas D. Poper

Shareef S. Farag
Nicholas D. Poper
Matthew J. Goodman
Matthew P. Eaton

Attorneys for Defendants
DIMENSION DEVELOPMENT COMPANY,
INC., DIMENSION DEVELOPMENT TWO,
LLC, and DR HOTEL EMPLOYEE
LEASING, LLC

PROOF OF SERVICE

I, Andrea Gonzalez, declare:

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1900 Avenue of the Stars, Suite 2700, Los Angeles, CA 90067-4301. On April 3, 2025, I served a copy of the within document(s):

DEFENDANTS' ANSWER TO PLAINTIFF'S *UNVERIFIED* FIRST AMENDED COMPLAINT



VIA CASE ANYWHERE: Based on a court order or an agreement between the parties, I electronically served the foregoing document(s) described above by uploading said document(s) onto the www.caseanywhere.com website.

David G. Spivak
Lauren R. Davis
The Spivak Law Firm
8605 Santa Monica Bl PMB 42554
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 3, 2025, at Los Angeles, California.

/s/ Andrea Gonzalez
Andrea Gonzalez

EXHIBIT 6

Raosoft Calculator

Population Size

105

Margin of Error (%)

32

Confidence Level

95%

Response Distribution (%)

50

Results (Forward)

Required Sample Size (infinite population): 10

Adjusted Sample Size (finite population): 9

Multi-Confidence Table

Based on your Margin of Error and Response Distribution.

Confidence Level	Z-score	Sample Size (∞ population)	Sample Size (finite p)
80%	1.2816	5	4
85%	1.4395	6	5
90%	1.6449	7	7
95%	1.9600	10	9
99%	2.5758	17	15

Determining the right sample size can make or break your research project. Too small, and your findings won't represent your target population. Too large, and you're wasting valuable time and resources. The Raosoft sample size calculator has become the go-to solution for researchers, students, and data analysts who need accurate sample size

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Ok

Understanding Key Sample Size Concepts

Before diving into the calculator itself, it's essential to grasp the fundamental concepts that drive sample size calculations.

Sample Size

Sample size refers to the number of participants or observations you include in your study. This number directly impacts the reliability and validity of your research findings. A well-calculated sample size ensures your results accurately reflect the characteristics of your entire target population.

The challenge lies in finding the sweet spot large enough to be statistically meaningful, yet practical enough to execute within your constraints of time, budget, and resources.

Margin of Error

The margin of error represents the amount of uncertainty you're willing to accept in your results. Expressed as a percentage, it creates a range around your sample statistic within which the true population parameter likely falls.

For instance, if your survey reveals that 60% of respondents prefer a particular product with a margin of error of $\pm 3\%$, you can be confident that between 57% and 63% of the entire

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Confidence Level

Your confidence level indicates how certain you can be that your sample results fall within the specified margin of error. This statistical measure is expressed as a percentage, with 90%, 95%, and 99% being the most frequently used levels.

A 95% confidence level means that if you repeated your study 100 times with different samples from the same population, approximately 95 of those studies would produce results within your margin of error. Higher confidence levels provide greater certainty but require larger sample sizes.

Population Size

Population size represents the total number of individuals in your target group. Interestingly, for populations exceeding 20,000 people, the actual population size has minimal impact on your required sample size. However, for smaller populations, this factor becomes increasingly important in your calculations.

Response Distribution

Response distribution reflects the expected variability in your survey responses. A 50% response distribution assumes maximum variability, where responses are split evenly between options. This conservative approach typically yields the largest recommended sample size, making it the safest choice when you're uncertain about response patterns.

How to Use the Raosoft Calculator: A Step-by-Step Guide

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Using the Raosoft sample size calculator is straightforward, but understanding each input ensures accurate results.

Step 1: Set Your Margin of Error

Begin by determining your acceptable margin of error. Enter this value as a percentage in the designated field. Remember that lower margins of error require larger sample sizes but provide more precise results.

Step 2: Choose Your Confidence Level

Select your desired confidence level from the dropdown menu. Most academic research uses 95%, while market research often accepts 90%. Critical medical or safety studies may require 99% confidence.

Step 3: Enter Population Size

Input your total population size. If you're studying a very large or unknown population, use 20,000 or higher, as the calculator's recommendations won't change significantly beyond this point.

Step 4: Set Response Distribution

Unless you have specific expectations about response patterns, leave this at 50%. This conservative approach ensures your sample size will be adequate regardless of how responses actually distribute.

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Click calculate to receive your recommended sample size. The tool also provides alternative scenarios, showing how different confidence levels or sample sizes would affect your margin of error.

Example Calculation

Let's work through a practical example. Suppose you're conducting market research for a new product launch:

- Margin of Error: 4%
- Confidence Level: 95%
- Population Size: 50,000 potential customers
- Response Distribution: 50%

The calculator recommends a sample size of 601 respondents. This means surveying 601 people would give you 95% confidence that your results are within 4% of the true population values.

Interpreting Your Results

Understanding your calculator results goes beyond simply noting the recommended sample size. The tool provides valuable insights that can inform your research strategy.

Minimum Sample Size

The primary result shows the minimum number of participants needed to meet your specified statistical requirements. This represents the threshold for reliable results, assuming you achieve 100% response rate from your selected sample.

Alternative Scenarios

Pay attention to the alternative scenarios section. This feature demonstrates how adjusting your parameters affects sample size requirements. For example, you might discover that accepting a slightly larger margin of error could

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Practical Considerations

Remember that the calculated sample size assumes random sampling and 100% response rates. In reality, you'll need to account for non-responses, incomplete surveys, and potential sampling limitations. Many researchers add a 10-20% buffer to their calculated sample size to compensate for these factors.

Real-World Applications of Sample Size Calculations

Understanding how different industries and research contexts apply sample size calculations helps illustrate the tool's versatility.

Market Research

A company developing a new smartphone wants to understand consumer preferences across different age groups. Using the Raosoft calculator, they determine they need 384 respondents for a 95% confidence level with a 5% margin of error. This sample size ensures their product development decisions are based on statistically reliable consumer insights.

Political Polling

A polling organization preparing for election coverage calculates sample sizes for different demographic segments. For statewide polls, they use 1,068 respondents to achieve 95% confidence with a 3% margin of error. This precision allows them to make accurate predictions while efficiently allocating their surveying resources.

Healthcare Surveys

A hospital system evaluating patient satisfaction across its network of facilities needs reliable feedback data. They

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each facility's results are statistically meaningful while keeping the survey manageable.

Academic Research

A university researcher studying student learning outcomes in online versus traditional courses needs sufficient sample sizes for both groups. Using the calculator, they determine that 246 students per group will provide 95% confidence with a 6% margin of error, making their comparative analysis statistically robust.

Quality Control

A manufacturing company implements statistical quality control processes for their production line. They use sample size calculations to determine how many products to inspect hourly, ensuring they can detect quality issues with 99% confidence while maintaining efficient production schedules.

The Importance of Sample Size in Research Success

Proper sample size calculation forms the foundation of credible research. Undersized studies may miss important effects or relationships, while oversized studies waste resources that could be better allocated elsewhere.

Statistical Power

Adequate sample sizes ensure your study has sufficient statistical power to detect meaningful differences or relationships. Underpowered studies often produce inconclusive results, potentially requiring costly follow-up research.

Resource Optimization

Calculating optimal sample sizes helps balance statistical rigor with practical constraints. You'll avoid the expense of

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Credibility and Publication

Research with properly calculated sample sizes is more likely to be accepted by peer reviewers and journal editors. Clear justification of sample size decisions demonstrates methodological rigor and statistical competence.

Frequently Asked Questions

What if my population size is infinite or unknown?

When dealing with very large or unknown populations, use a large number such as 1,000,000 in the population size field. For populations larger than 20,000, the sample size doesn't change significantly, so any large number will provide accurate results.

How does changing the confidence level affect the sample size?

Increasing your confidence level requires a larger sample size because you're demanding greater certainty in your results. Moving from 90% to 95% confidence typically increases sample size requirements by about 40%, while jumping to 99% confidence nearly doubles the needed sample size.

Can I use the Raosoft calculator for qualitative research?

The Raosoft calculator is specifically designed for quantitative research involving numerical data and statistical analysis. Qualitative research typically uses different approaches to determine appropriate sample sizes, focusing on data saturation rather than statistical power.

Maximize Your Research

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The Raosoft sample size calculator serves as an invaluable tool for researchers across disciplines. By understanding the key concepts, following proper procedures, and interpreting results correctly, you can design studies that produce reliable, actionable insights while making efficient use of your resources.

Remember that sample size calculation is just the beginning of good research design. Consider factors such as sampling methods, survey design, data collection procedures, and analysis plans to ensure your study achieves its objectives.

Ready to determine the perfect sample size for your next research project? **Calculate your sample size today** using our comprehensive understanding of these principles, and take the first step toward conducting research that makes a meaningful impact in your field.

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EXHIBIT 7

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Case title: Maria Jacqueline Batres v. Dr Hotel Employee Leasing LLC
Case no.: 24STCV28018
Court: Los Angeles
Judge: Hon. Elaine Lu, Dept. SSC-9
Page subject: **Data**

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Tuesday, October 27, 2020
Lab.Code § 203 (waiting time penalties) period begins:	Wednesday, October 27, 2021
Lab.Code § 2699 (civil penalties) period begins:	Wednesday, October 25, 2023
Lab.Code § 226 (pay stub penalties) period begins:	Friday, October 27, 2023
LWDA Notice:	Thursday, October 24, 2024
Lawsuit:	Saturday, October 26, 2024
Sample begin:	Sunday, October 25, 2020
Sample end:	Friday, December 8, 2023
Sample calendar days:	1,139
Mediation:	Thursday, July 24, 2025
Anticipated Settlement Period end date:	Friday, December 8, 2023
Settlement Period to Sample Period:	99.82%

Classes / Groups sizes

UCL Class Members:	105
UCL Workweeks:	5,484
UCL Wage Statements:	3,185
UCL Workdays:	29,277
UCL Calendar days:	1,731
UCL Months:	1,262
 Waiting Time Penalties Class Members:	 90
 PAGA Aggrieved Employees:	 66
PAGA Wage Statements:	407
 Wage Statement Class Members:	 66
Wage Statement Class Wage Statements:	407

Averages

Average Hourly Rate:	\$	17.88
Average Overtime Rate:	\$	26.82
Average Doubletime Rate:	\$	35.76
 Average Work Hours Per Day:		 7.75
Average Work Hours Per Week:		35.19
Average Workdays Per Week:		4.54
Workdays to Calendar Days (%):		64.86%
Paycycle:	semimonthly (24 paychecks/year)	
Paychecks Per Year:		24

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Case title: Maria Jacqueline Batres v. Dr Hotel Employee Leasing LLC
Case no.: 24STCV28018
Court: Los Angeles
Judge: Hon. Elaine Lu, Dept. SSC-9
Page subject: **Unpaid wages**
Authority: Lab.Code §§ 1194, 1194.2, and 1198

Average Hourly Rate:	\$	17.88
Unpaid hours per work day:		0.33
Unpaid hours per pay week:		1.50
Actionable workweeks:		5,484
Interest:		10%
Unpaid wages:	\$	161,594.82
Liquidated damages:	\$	161,594.82

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Case title: Maria Jacqueline Batres v. Dr Hotel Employee Leasing LLC
Case no.: 24STCV28018
Court: Los Angeles
Judge: Hon. Elaine Lu, Dept. SSC-9
Page subject: **Unprovided Meal Periods**
Authority: Lab.Code §§ 226.7, 512, and 1198

Average Hourly Rate:	\$	17.88
Actionable workdays:		29,277
>>Percentage qualifying for meal periods:		95.62%
Violation rate (%)		53.58%
\$ paid in premium wages:	\$	30,429.17
Approx. premium hours paid:		1,623.68
Percentage of shifts with premium payments		5.55%
Meal period premium wages:	\$	251,445.31

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Case title: Maria Jacqueline Batres v. Dr Hotel Employee Leasing LLC
Case no.: 24STCV28018
Court: Los Angeles
Judge: Hon. Elaine Lu, Dept. SSC-9
Page subject: **Unprovided Rest Periods**
Authority: Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	\$	17.88
Actionable workdays:		29,277
>>Percentage qualifying for rest periods:		99.18%
Violation rate (%)		99.18%
\$ paid in premium wages:	\$	28,417.25
Approx. premium hours paid:		1,514.96
Percentage of shifts with premium payments		5.17%
Rest period premium wages:	\$	492,092.80

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Case title: Maria Jacqueline Batres v. Dr Hotel Employee Leasing LLC
Case no.: 24STCV28018
Court: Los Angeles
Judge: Hon. Elaine Lu, Dept. SSC-9
Page subject: **Itemized Wage Statements**
Authority: Lab.Code § 226

Wage Statement Class Members:		66
Wage Statement Class Wage Statements:		407
Initial penalty:	\$	50.00
Subsequent penalty:	\$	100.00
Statutory wage statement penalties:	\$	37,400.00

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Case title: Maria Jacqueline Batres v. Dr Hotel Employee Leasing LLC
Case no.: 24STCV28018
Court: Los Angeles
Judge: Hon. Elaine Lu, Dept. SSC-9
Page subject: **Waiting Time / Final Wages**
Authority: Lab.Code § 203

Waiting Time Penalties Class Members:		90
Days waiting:		30
Average Hourly Rate:	\$	17.88
Average Overtime Rate:	\$	26.82
Average Doubletime Rate:	\$	35.76
Average Work Hours Per Day:		8.08
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.08
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	392,001.12

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Case title: Maria Jacqueline Batres v. Dr Hotel Employee Leasing LLC
Case no.: 24STCV28018
Court: Los Angeles
Judge: Hon. Elaine Lu, Dept. SSC-9
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil		Subsequent		Pay periods		Total
	Penalty Statute	Initial penalty	penalty				
Misclassification (Lab.Code § 226.8)	Lab.Code § 226.8	\$ 25,000.00	\$ 25,000.00	66	\$		1,650,000.00
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00	407	\$		101,600.00
Overtime wages (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	\$ 100.00	407	\$		40,650.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00	407	\$		40,650.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	407	\$		81,300.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00	407	\$		81,300.00
Vacation pay (Lab.Code § 227.3):	Lab.Code § 2699	\$ 100.00	\$ 200.00	407	\$		81,300.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 250.00	\$ 1,000.00	407	\$		406,250.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	407	\$		81,300.00
Total:					\$		914,350.00

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Case title: Maria Jacqueline Batres v. Dr Hotel Employee Leasing LLC
Case no.: 24STCV28018
Court: Los Angeles
Judge: Hon. Elaine Lu, Dept. SSC-9
Page subject: **Totals**
Authority: Various

Restitution		Reduction	Demand
Unpaid wages:	\$ 161,594.82	5% \$	153,515.08
Liquidated damages:	\$ 161,594.82	5% \$	153,515.08
Meal period premium wages:	\$ 251,445.31	5% \$	238,873.04
Rest period premium wages:	\$ 492,092.80	5% \$	467,488.16
Restitution subtotal:	\$ 1,066,727.75	\$	1,013,391.36
Penalties			
Statutory wage statement penalties:	\$ 37,400.00	5% \$	35,530.00
Waiting time penalties:	\$ 392,001.12	5% \$	372,401.06
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 101,600.00	5% \$	96,520.00
Overtime wages (Lab.Code § 510):civil penalties:	\$ 40,650.00	5% \$	38,617.50
Meal periods Lab.Code § 512):civil penalties:	\$ 40,650.00	5% \$	38,617.50
Rest periods (Lab.Code § 1198):civil penalties:	\$ 81,300.00	5% \$	77,235.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 406,250.00	5% \$	385,937.50
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 81,300.00	5% \$	77,235.00
Penalties subtotal:	\$ 1,181,151.12	\$	1,122,093.56
Grand total:	\$ 2,247,878.87	\$	2,135,484.92

EXHIBIT 8



CONSULTA DE ABOGADOS Y CONTRATO DE HONORARIOS PARA CASOS DE CONTINGENCIA

ESTE CONTRATO DE HONORARIOS PARA CASOS DE CONTINGENCIA (“Contrato”) se celebra el August 23, 2024, en Los Angeles, California entre Maria Batres, en lo sucesivo denominado “Cliente”, por un lado, y The Spivak Law Firm de Los Angeles, CA y United Employees Law Group de West Hollywood, CA, por otro lado, en lo sucesivo denominados colectivamente como “Abogados”:

En consideración de las promesas mutuas aquí contenidas, las partes acuerdan lo siguiente:

I. PROPÓSITO DE LA REPRESENTACIÓN

1.01 Por la presente, el Cliente contrata y emplea Abogados para demandar y recuperar todos los recursos monetarios y equitativos a los que el Cliente pueda tener derecho, así como para comprometer y resolver todas las reclamaciones que se describen a continuación:

Demanda colectiva y demanda Ley General de Abogados Privados (“PAGA”) por falta de pago de salarios, falta de proporcionar períodos de comida, falta de proporcionar descansos, y reclamaciones relacionadas contra Dr Hotel Employee Leasing LLC y entidades relacionadas.

1.02 Este acuerdo no será vinculante para ninguna de las partes, y los Abogados no comenzarán a brindar servicios legales hasta que el Cliente haya firmado este Acuerdo.

1.03 Los abogados brindarán los servicios legales razonablemente necesarios y tomarán las medidas necesarias para mantener informado al Cliente sobre el progreso del caso. Los abogados responderán dentro de un tiempo y forma razonables a las consultas del Cliente. Si se hace necesario un proceso judicial, los Abogados representarán al Cliente durante el juicio y mociones posteriores al fallo. Se deben hacer arreglos separados para cualquier procedimiento de apelación o ejecución que el cliente desee llevar a cabo después del fallo, o cualquier otro asunto para el cual el Cliente desee contratar Abogados que no sean los descritos anteriormente.

II. HONORARIOS Y GASTOS DE ABOGADOS

2.01 En consideración de los servicios prestados y que serán prestados por los Abogados, el Cliente acuerda pagar a los Abogados las siguientes cantidades sobre cualquier acuerdo, dinero, juicio u otra consideración que se haya pagado o se pueda pagar en este asunto legal:

2.01.1 Antes de la presentación de una demanda o iniciar un proceso de arbitraje: 33 y 1/3 por ciento de cualquier recuperación.

2.01.2 Después de la presentación de una demanda o iniciar un proceso de arbitraje: 40 por ciento de cualquier recuperación. En caso de que el Cliente prevalezca en el juicio (o arbitraje) de este asunto, cualquier adjudicación de honorarios por el tribunal, de conformidad con la ley o el contrato, en relación con el tema de esta representación, se pagará a los Abogados y se aplicará a los honorarios del Cliente en virtud de este Acuerdo, pero no limitará ni exonerará la obligación de honorarios del Cliente. En el caso de que el tribunal adjudique honorarios al Cliente que prevalezca en el juicio, los Abogados recibirán la adjudicación de honorarios o 40% de la adjudicación total, lo que sea mayor.

2.02 Se acuerda y se entiende que si el monto de los honorarios de abogados en este reclamo o causa de la demanda está regulado o regido por la ley, y esa ley excluye cualquier otro acuerdo de honorarios que no sea el monto establecido por la ley o el reglamento, entonces el monto pagadero en virtud del presente contrato a dichos Abogados se limitará al máximo permitido por la ley. En el caso de un acuerdo o sentencia de demanda colectiva, un acuerdo o sentencia PAGA, u otro acuerdo o resolución representativa, es necesaria la aprobación de un tribunal para la adjudicación de honorarios de abogados. Normalmente, con dichos acuerdos y sentencias, una solicitud de honorarios de abogados será por no más de un tercio (33 y 1/3%) del valor total del monto del acuerdo o sentencia. Los abogados solicitarán una adjudicación de honorarios de abogados del tribunal que puede ser mayor o menor que los porcentajes indicados anteriormente. Bajo tales circunstancias. Los abogados también le pedirán al tribunal que les adjudique al Cliente's por separado los gastos que han adelantado por este asunto. Antes de tales solicitudes a un Tribunal de honorarios y costos de abogados, los Abogados buscarán el consentimiento por escrito del Cliente para los honorarios y costos de abogados solicitados.

2.03.4 Por razones que se desconocen en el momento de este Acuerdo y por razones que están fuera del control de los Abogados y el Cliente, los Abogados pueden descubrir después de que el Cliente ejecute este Acuerdo que no existen

numerosos empleados comparables con reclamaciones comparables a las reclamaciones del Cliente. En este caso, es posible que los Abogados y el Cliente ya no puedan continuar con la demanda colectiva o las reclamaciones de PAGA.

2.03.5 Con base en la experiencia previa de los Abogados, los Demandados (la parte o partes que el Cliente demanda o tiene la intención de demandar) en demandas colectivas y acciones PAGA a menudo intentan llegar a una resolución con el Demandante (la parte que demanda o tiene la intención de demandar) por el valor máximo de las reclamaciones individuales del Demandante. Tales resoluciones impiden que el Demandante continúe representando a personas comparables (a veces conocidas como “miembros de la demanda colectiva”, “miembros putativos de la demanda colectiva”, “miembros propuestos de la demanda colectiva” y/o “empleados agraviados”) en nombre de quienes el Cliente presentó la demanda.

2.03.6 Con base en la experiencia previa de los Abogados, el Demandado puede ofrecer resolver las reclamaciones individuales del Cliente por una cantidad de dinero que iguale o exceda el valor máximo de las reclamaciones del Cliente. En este caso, los honorarios y costos de los Abogados probablemente excederán el valor máximo de las reclamaciones individuales del Cliente. A menudo, según la experiencia de los Abogados, los honorarios y costos de los Abogados excederán con mucho el valor de las reclamaciones individuales del Cliente.

2.03.7 Los Abogados pueden aconsejar al Cliente que acepte un acuerdo de liquidación individual de las reclamaciones del Cliente si no existen numerosas personas con reclamaciones comparables a las del Cliente y un acuerdo de liquidación individual es lo mejor para el Cliente. Alternativamente, el Cliente puede optar por llegar a un acuerdo de liquidación por un monto que iguale o supere el valor máximo de las reclamaciones individuales del Cliente, incluso si hay numerosas personas con reclamaciones que son comparables a las reclamaciones del Cliente.

2.03.8 Con base en la evidencia que los Abogados pueden obtener después de llegar a este Acuerdo con el Cliente, la estimación de los Abogados del valor máximo de las reclamaciones del Cliente puede cambiar en el transcurso de la relación Abogado-Cliente en virtud de este Acuerdo.

2.03.9 En caso de que el Demandado ofrezca llegar a una resolución con el Cliente por una cantidad de dinero que iguale o supere el valor máximo de las reclamaciones individuales del Cliente, el Cliente acepta que, si los honorarios y costos de los Abogados exceden el valor máximo de las reclamaciones del Cliente, los

Abogados pueden elegir, únicamente al elección del Cliente, que el Cliente reciba sólo el valor máximo de las reclamaciones individuales del Cliente de los fondos del acuerdo de liquidación y que los Abogados reciban los fondos del acuerdo de liquidación restantes para cubrir la totalidad o parte de los honorarios y costos de los Abogados y los riesgos que surgen de la representación de contingencia del Cliente por parte de los Abogados. En otras palabras, el Cliente se compromete a aceptar como el acuerdo de liquidación la cantidad igual al valor máximo estimado de las reclamaciones del Cliente. Los Abogados revelan que los honorarios de Abogados y los costos incurridos pueden exceder sustancialmente la recuperación neta del Cliente.

2.03.10 Dentro de los siete días de la solicitud por escrito del Cliente a los Abogados, ellos le proporcionarán al Cliente su estimación del valor máximo de las reclamaciones del Cliente. Esta estimación del valor máximo puede cambiar en el transcurso del litigio.

2.03.11 Los abogados recomiendan encarecidamente que el Cliente consulte con un abogado independiente sobre esta disposición, incluyendo si esta disposición es lo mejor para el Cliente. Al escribir sus iniciales a continuación, el Cliente acepta que los Abogados le han brindado al Cliente una oportunidad razonable para consultar con un abogado independiente sobre esta disposición y el Cliente da su consentimiento a esta disposición.


_____ (Iniciales del Cliente)

2.04 Las tarifas establecidas anteriormente no están establecidas por ley, pero son negociables entre un abogado y un cliente.

2.05 El Cliente acepta otorgar a los Abogados un derecho de retención sobre todas y cada una de las reclamaciones o causas de la demanda que sean objeto de este Acuerdo. El derecho de retención, para asegurar el pago de cualquier suma adeudada a los Abogados al finalizar los servicios prestados, se adjuntará a cualquier recuperación que el Cliente pueda obtener. Los Abogados pueden exigir el pago de honorarios y costos de tales fondos recuperados en nombre del Cliente, incluso si los Abogados han sido despedidos antes de que finalice el caso. El Cliente puede buscar la opinión de un abogado independiente de la elección del Cliente's antes de aceptar este derecho de retención. Al escribir sus iniciales a continuación, el Cliente acepta que el Cliente ha tenido la oportunidad razonable para consultar a un bufete de abogados independiente, independientemente de si el Cliente ha consultado realmente a dicho bufete de

abogados, y el Cliente acepta que los abogados tendrán un derecho de retención como se especifica anteriormente.

MB

(Iniciales del Cliente aquí)

DS

(Iniciales de David Spivak aquí)

III. APROBACIÓN NECESARIA PARA EL ACUERDO DE LIQUIDACIÓN

3.01 Por la presente, los Abogados están autorizados a participar en todas y cada una de las negociaciones del acuerdo de liquidación en nombre de aquellos a quienes los Abogados representan, según lo consideren apropiado. Esto incluye, pero no se limita a, la prerrogativa de los Abogados de emprender negociaciones del acuerdo de liquidación de pagos en efectivo o estructurados.

3.02 Por la presente, el Cliente otorga a los Abogados un poder notarial para manejar las negociaciones y discusiones del acuerdo de liquidación con respecto a la obtención de la posesión de todos y cada uno de los dineros u otras cosas de valor objeto del asunto adeudado al Cliente en virtud de esta reclamación en la mayor medida en que el Cliente podría hacerlo en persona.

3.02.1 Esto incluye expresamente el derecho a firmar el nombre del Cliente en cualquier cheque de la compañía de seguros, giros postales, cheques de caja, cheques u otros instrumentos negociables pagaderos a Abogados y Clientes, Abogados o al Cliente sin la unión de Abogados, presentados a Abogados en nombre del Cliente en el acuerdo de liquidación total o parcial de este caso.

3.02.2 Este poder notarial limitado autoriza además a los Abogados a colocar estos dineros, mencionados anteriormente, en la cuenta fiduciaria de The Spivak Law Firm y desde esa cuenta de fideicomiso, realizar distribuciones y pagos a los Abogados por la tarifa acordada indicada anteriormente, reembolso a los Abogados por todos y cada uno de los gastos incurridos por los Abogados en el manejo de este caso, pagos al Cliente de los intereses del Cliente en el dinero recuperado como se indicó anteriormente, y pagos a terceros que no sean el Cliente y los Abogados por los servicios prestados, los honorarios cobrados o las facturas entregadas en relación con la representación del Cliente, incluyendo, entre otros, las facturas médicas, los honorarios de los taquígrafos judiciales, los honorarios de las deposiciones, los servicios de investigación, los costos de las pruebas u otros gastos especiales incurridos por los Abogados en nombre del Cliente.

3.03 No se realizará ningún acuerdo de liquidación de ningún tipo por ninguna de las reclamaciones o ganancias antes mencionados del Cliente sin la aprobación completa del Cliente, ni el Cliente obtendrá ningún acuerdo de liquidación sobre las reclamaciones mencionadas anteriormente sin la aprobación completa del abogado.

3.04 A los abogados se les otorga un poder notarial limitado para que puedan tener plena autoridad para preparar, firmar y presentar todos los instrumentos legales, alegatos, borradores, autorizaciones y documentos que sean razonablemente necesarios para concluir esta representación, incluyendo el acuerdo de liquidación y/o reducir a posesión de cualquier y todo dinero u otras cosas de valor adeudadas al Cliente en virtud de esta reclamación en la medida en que el Cliente pueda hacerlo en persona.

IV. REPRESENTACIONES

4.01 Se acuerda y se entiende expresamente que el Abogado no ha hecho promesas ni garantías en cuanto al resultado del caso al Cliente. Los abogados no han manifestado al Cliente que el Cliente recuperará todos o parte de los fondos deseados. El Cliente también reconoce que obtener un fallo no garantiza que la parte contraria pueda cumplir con la resolución del tribunal. Además, se entiende y se acepta expresamente que no se han hecho otras representaciones al Cliente, excepto las establecidas en este Contrato.

V. DEDUCCIÓN DE GASTOS

5.01 Todos los gastos razonables incurridos por los Abogados en el manejo de este asunto legal se deducirán de los ingresos netos del acuerdo de liquidación en el momento en que se liquide o resuelva el caso, y antes de que el honorario contingente sea calculado.

5.02 Los gastos contemplados anteriormente incluyen, entre otros, todos y cada uno de los gastos de bolsillo incurridos en relación con este caso, incluyendo, entre otros, los siguientes gastos: honorarios de presentación, costos judiciales, copias certificadas de documentos, alegatos, órdenes etc., transcripciones, declaraciones, costos de duplicación, franqueo, suministros de oficina, fotografías, pruebas de juicio, llamadas telefónicas y de fax de larga distancia, honorarios de tasación, consultores, testigos expertos y otros honorarios asociados con la preparación y el testimonio del juicio, honorarios de investigación, cargos de entrega, servicios de paquetería/correo al día siguiente, gastos de estacionamiento, carretera de peaje y kilometraje, gastos fuera

de la ciudad, incluyendo gastos de viaje, pasajes aéreos, hoteles, comidas y cualquier otro gasto incurrido en relación con el asunto.

5.03 Excepto por lo siguiente, todos los gastos y costos serán cargados al Cliente a costo de los Abogados: millaje a \$0.50/milla y fotocopias a \$0.25/página.

VI. COOPERACIÓN DEL CLIENTE

6.01 El Cliente mantendrá informados a los Abogados sobre el paradero del Cliente en todo momento, y les proporcionará a los Abogados cualquier cambio de dirección, número de teléfono o afiliación empresarial durante el período de tiempo en el que se requieran los servicios de los Abogados, y cumplirá con todas las solicitudes razonables de los Abogados en relación con la preparación y presentación de dicha representación.

6.02 Los Abogados pueden, a elección de los Abogados, retirarse del caso y dejar de representar al Cliente por cualquier motivo, incluyendo, entre otros, el hecho de que el Cliente no pague oportunamente los honorarios y gastos o depósitos correspondientes de conformidad con este Contrato, sujeto a los requisitos de responsabilidad profesional a los que están sujetos los abogados.

6.03 Además, se entiende y se acuerda entre las partes que, al finalizar cualquier servicio de Abogado, cualquiera de los depósitos del Cliente que queden en la Cuenta de Fideicomiso de The Spivak Law Firm se aplicará a cualquier saldo restante adeudado a los Abogados por honorarios y/o gastos y cualquier excedente restante se reembolsará al Cliente.

6.04 Deberes como representante de los grupos demandantes en una demanda colectiva o demanda PAGA. El Cliente ha contratado Abogados para procesar una demanda colectiva y/o demanda PAGA en nombre del Cliente y empleados comparables y otras personas. Esta sección se aplica únicamente a las responsabilidades del Cliente como representante de los grupos demandantes o como abogado general privado. El cliente tendrá ciertos deberes y responsabilidades con respecto a las personas comparables en nombre de las cuales se presenta la demanda. Algunos de estos deberes se explican con mayor detalle a continuación.

6.04.1 Los abogados pueden solicitar al Tribunal una adjudicación especial para compensar al Cliente como representante de los grupos demandantes o abogados

generales privados por la contribución del Cliente a la demanda y/o la exoneración del Cliente de todas las reclamaciones individuales que el Cliente pueda tener. Sin embargo, el Cliente entiende que, a menos que el Tribunal apruebe dicha adjudicación, el Cliente sólo tendrá derecho a la parte prorrateada del Cliente de los fondos disponibles para su distribución a todos los miembros de la demanda colectiva, empleados agraviados e individuos comparables.

6.04.2 Un representante de la demanda colectiva representa los intereses de todos los miembros de su demanda colectiva en litigios para recuperar dinero de salarios no pagados, sanciones, reembolsos, restitución y/u obtener medidas cautelares para la demanda colectiva. Del mismo modo, un abogado general privado representa los intereses de todos los empleados agraviados comparables en litigios para recuperar dinero de sanciones civiles (sanciones monetarias que tradicionalmente sólo el Estado puede demandar) en nombre del Cliente, otros empleados agraviados y del Estado de California.

6.04.3 La demanda colectiva o grupo de empleados agraviados generalmente consiste en todas las personas que están en una situación similar con respecto a un curso de conducta o práctica común. En otras palabras, todas aquellas personas que se ven afectadas por el comportamiento cuestionado.

6.04.4 Un representante de la demanda colectiva o los abogados generales privados tienen reclamaciones que son típicas de las de la demanda colectiva o grupo de empleados agraviados y, por lo tanto, involucran cuestiones comunes de derecho o, de hecho. Por ejemplo, como representante de la demanda colectiva, las reclamaciones del Cliente contra el demandado son típicas de las reclamaciones de la demanda colectiva y del abogado general privado contra el demandado, simplemente porque el Cliente resultó lesionado por las mismas prácticas de empleo ilegales que los otros miembros de la demanda colectiva y los empleados agraviados.

6.04.5 Un representante de la demanda colectiva y un abogado general privado siempre considera los intereses de la demanda colectiva y/o los empleados agraviados de la misma manera que el Cliente consideraría los intereses propios del Cliente y, en algunos casos, debe anteponer los intereses de la clase y otros empleados agraviados a los intereses propios del Cliente. Esto significa que el Cliente es un defensor de las otras personas o un litigante fiduciario.

6.04.6 Un representante de la clase o un fiscal general privado siempre participa activamente en la demanda, según sea necesario, entre otras cosas,

respondiendo a los interrogatorios, presentando documentos a los demandados y brindando declaración y testimonio en el juicio si así se solicita. Es posible que se requiera que el Cliente viaje para dar tal testimonio.

6.04.7 Un representante de la demanda colectiva o un abogado general privado reconoce y acepta que cualquier resolución de la demanda por desestimación o acuerdo de liquidación está sujeta a la aprobación del tribunal y debe diseñarse en el mejor interés de la demanda colectiva en su conjunto.

6.04.8 No se requiere que un representante de la demanda colectiva o un abogado general privado sea particularmente sofisticado o tenga conocimientos sobre el tema de la demanda. Sin embargo, un abogado general privado representante de la demanda colectiva debe seguir el progreso de la demanda y debe proporcionar todos los hechos relevantes a los abogados de la demanda colectiva o los empleados agraviados.

6.04.9 Un representante de la demanda colectiva o un abogado general privado se ofrece como voluntario para representar o defender a muchas otras personas con reclamaciones y lesiones similares debido a la importancia del caso y la necesidad de que todos los miembros de la demanda colectiva o los empleados agraviados se beneficien de la demanda por igual; el ahorro de tiempo, dinero y esfuerzo debería beneficiar a todas las partes y al tribunal. Las demandas colectivas y las demandas PAGA son una herramienta importante para garantizar el cumplimiento de la ley, incluyendo cuando las pérdidas de una persona pueden ser relativamente pequeñas.

Al escribir sus iniciales a continuación, el Cliente ha revisado y reconoce los deberes del Cliente como representante de la demanda colectiva y/o del abogado general privado.

MB (Iniciales del Cliente aquí)

VIII. SE APLICA LA LEY DE CALIFORNIA

7.01 Este Acuerdo se interpretará de conformidad con las leyes de California, y todas las obligaciones de las partes creadas en virtud del presente son ejecutables en el Condado de Los Ángeles, CA.

VIII. PARTES VINCULANTES

8.01 Este Acuerdo será vinculante y redundará en beneficio de las partes del este y de sus respectivos herederos, albaceas, administradores, representantes legales, sucesores y cesionarios donde lo permita este Acuerdo.

IX. INTERPRETACIÓN JURÍDICA

9.01 En caso de que una o más de las disposiciones contenidas en este Acuerdo, por cualquier motivo, se consideran inválidas, ilegales o inaplicables en cualquier aspecto, dicha invalidez, ilegalidad o inaplicabilidad no afectará ninguna otra disposición del mismo y este Acuerdo. se interpretará como si dicha disposición inválida, ilegal o inaplicable nunca hubiera estado contenida en este documento.

X. ACUERDOS ANTERIORES REEMPLAZADOS

10.01 Este Acuerdo constituye el único y único acuerdo por y entre las partes. Hace nulo y reemplaza cualquier acuerdo previo o acuerdo escrito u oral entre las partes con respecto al tema tratado en este documento.

XI. RESOLUCIÓN DE CONTROVERSIAS MEDIANTE ARBITRAJE

11.01 El Cliente tiene derecho a elegir el arbitraje de conformidad con los procedimientos de arbitraje de honorarios del Colegio de Abogados del Estado de California, en cualquier disputa sujeta a la jurisdicción del Estado de California sobre los honorarios, cargos, costos o gastos de abogados, según lo establecido en la Sección 6200, et seq. del Código de Negocios y Profesiones de California. Si, después de recibir una notificación de este derecho a arbitraje, el Cliente no elige proceder conforme a los procedimientos de arbitraje de honorarios de la Asociación de Abogados del Estado y no presenta una solicitud de arbitraje de honorarios dentro de los 30 días, cualquier disputa sobre honorarios, cargos, costos o gastos, se resolverá mediante arbitraje vinculante como se describe a continuación.

11.02 Cualquier controversia entre las partes con respecto a la interpretación, aplicación o ejecución de cualquier servicio en virtud de este Acuerdo, y cualquier

reclamación que surja o esté relacionada con este Acuerdo o su incumplimiento, se someterá a arbitraje vinculante a solicitud por escrito de una de las partes después de la notificación de esa solicitud a la otra parte. El único y exclusivo lugar para el arbitraje y/o cualquier disputa legal será el Condado de Los Ángeles, California.

11.03 Al escribir sus iniciales a continuación, el Cliente y los Abogados confirman que han leído y entendido los párrafos anteriores y aceptan voluntariamente el arbitraje vinculante. Al hacerlo, el Cliente y los Abogados renuncian voluntariamente a importantes derechos constitucionales de un juicio ante un juez o ante un jurado, así como a los derechos de apelación. Se informa al cliente que cliente tiene derecho a tener un bufete de abogados independiente de la elección del Cliente para que revise estas disposiciones de arbitraje, y todo este acuerdo, antes de escribir sus iniciales en esta disposición o firmar este Acuerdo.

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(Iniciales del Cliente aquí)

DS

(Iniciales de David Spivak aquí)

DIVULGACIÓN Y RECONOCIMIENTO DE IMPUESTOS:

SE RECOMIENDA AL CLIENTE QUE OBTENGA ASESORAMIENTO DE IMPUESTOS INDEPENDIENTE Y COMPETENTE CON RESPECTO A ESTOS ASUNTOS LEGALES YA QUE LAS TRANSACCIONES LEGALES PUEDEN DAR LUGAR A CONSECUENCIAS DE IMPUESTOS.

LOS BUFETES DE ABOGADOS Y LOS ABOGADOS QUE ABAJO FIRMAN NO HAN ACORDADO EN PRESTAR NINGÚN ASESORAMIENTO DE IMPUESTOS Y NO SON RESPONSABLES DE NINGÚN ASESORAMIENTO RELACIONADO CON ASUNTOS DE IMPUESTOS O LA PREPARACIÓN DE DECLARACIONES DE IMPUESTOS U OTROS DECLARACIONES, INCLUYENDO, ENTRE OTROS, DECLARACIONES DE IMPUESTOS ESTATALES Y FEDERALES SOBRE INGRESOS Y HERENCIAS.

ADEMÁS, EL CLIENTE DEBE OBTENER AYUDA PROFESIONAL CON RESPECTO A LA VALORACIÓN Y UBICACIÓN DE TODOS LOS ACTIVOS QUE PUEDAN SER OBJETO DE UN ASUNTO LEGAL, INCLUYENDO, ENTRE OTROS, PENSIONES, BENEFICIOS LABORALES Y LOS DERECHOS DE PARTICIPACIÓN EN LAS GANANCIAS QUE PUEDAN SER

CONTROLADOS POR CUALQUIER OTRA PARTE DEL ASUNTO LEGAL.

XII. EXCLUSIÓN DE GARANTÍAS

12.01 Nada en este Acuerdo y nada en las declaraciones de los Abogados al Cliente se interpretará como una promesa o garantía sobre el resultado del asunto. Los abogados no hacen tales promesas o garantías. No puede haber ninguna garantía de que el Cliente recuperará cualquier suma o sumas de dinero en este asunto. Los comentarios de los abogados sobre el resultado de este asunto son únicamente expresiones de opinión. El Cliente reconoce que los Abogados no han hecho promesas ni garantías sobre el resultado.

XIII. DESPIDO Y RENUNCIA

13.01 El Cliente puede despedir a los Abogados en cualquier momento, con notificación por escrito. Los Abogados pueden renunciar con el consentimiento del Cliente, o por una buena causa, que incluye el incumplimiento de este Acuerdo por parte del Cliente, la negativa a cooperar o comunicarse con los Abogados sobre este asunto, o cualquier hecho o circunstancia que haga que la representación de los Abogados sea ilegal o poco ética. Los Abogados, a solicitud del Cliente, entregarán el archivo y la propiedad del Cliente en su posesión, a menos que estén sujetos a un gravamen según lo dispuesto anteriormente, ya sea que el Cliente haya completado o no el pago de todos los servicios prestados.

XIV. FECHA DE ENTRADA EN VIGOR

14.01 Este Acuerdo regirá todos los servicios legales a partir de la fecha en que los Abogados comenzaron a realizar trabajos para el Cliente. La fecha de este documento debe utilizarse únicamente como referencia. El Cliente deberá pagar a los Abogados el valor razonable de los servicios prestados por los Abogados, incluso si este acuerdo nunca entra en vigor.

Además, certifico y reconozco que he leído este Contrato y que voluntariamente he celebrado este Contrato con pleno conocimiento de sus términos y condiciones a partir de la fecha en que los Abogados prestaron sus servicios por primera vez. Todos

los clientes que firman a continuación aceptan ser responsables, conjunta y solidariamente, de todas las obligaciones en virtud de este acuerdo.

Firmado el: 09 / 10 / 2024



Maria Batres

THE SPIVAK LAW FIRM

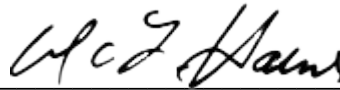


Firmado el: 09 / 11 / 2024

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de California No. 71075

DECLARACIÓN DE LOS DERECHOS DEL CLIENTE POR CONCEPTO DE HONORARIOS DE CONTINGENCIA

Antes de que usted, el posible cliente, establezca un acuerdo de honorarios contingentes con un abogado, debe entender y comprender esta declaración de sus derechos como cliente. Esta declaración no es parte del contrato real entre usted y su abogado, pero, como posible cliente, debe conocer estos derechos.

1. No existe ningún requisito legal de que un abogado le cobre a un cliente un honorario fijo o un porcentaje del dinero recuperado en un caso. Usted, el Cliente, tiene derecho a hablar con su abogado sobre los honorarios propuestos y negociar el honorario o el porcentaje como en cualquier otro contrato. Si no llega a un acuerdo con un (1) abogado, puede hablar con otros abogados.

2. Cualquier contrato de honorarios contingentes debe ser por escrito y usted tiene tres (3) días hábiles para reconsiderar el contrato. Usted puede cancelar el contrato sin ningún motivo si notifica a su abogado por escrito dentro de los 3 días hábiles siguientes de haber firmado el contrato. Si se retracta del contrato dentro de los primeros tres (3) días hábiles, usted no le debe honorarios al abogado, aunque puede ser responsable de los costos reales del abogado durante ese tiempo. Si su abogado comienza a representarlo, su abogado no puede retractarse del caso sin darle aviso, sin entregarle los documentos necesarios y darle tiempo para contratar a otro abogado. A menudo, su abogado debe obtener la aprobación del tribunal antes de retractarse de un caso. Si despidе a su abogado sin una buena causa después del período de 3 días, usted debe pagar honorarios por el trabajo que el abogado haya realizado.

3. Antes de contratar a un abogado, usted, el Cliente, tiene derecho a conocer la educación, formación y experiencia del abogado. Si le pregunta, el abogado debe informarle específicamente sobre la experiencia real del abogado en el manejo de casos similares al suyo. Si usted lo solicita, el abogado debe brindarle información sobre formación o conocimientos especiales y darle esta información por escrito si usted así lo solicita.

4. Antes de firmar un contrato de honorarios contingentes con usted, un abogado debe informarle si el abogado tiene la intención de manejar su caso solo o si otros abogados lo ayudarán con el caso. Si su abogado tiene la intención de remitir el caso a otros abogados, el abogado debe decirle qué tipo de arreglo de reparto de

honorarios se hará con los otros abogados. Si lo representarán abogados de diferentes bufetes de abogados, al menos un (1) abogado de cada bufete de abogados deberá firmar el contrato de honorarios contingentes.

5. Si su abogado tiene la intención de remitir su caso a otro abogado o asesorarse con otros abogados, su abogado debe informarle sobre eso desde el principio. Si su abogado toma el caso y luego decide remitirlo a otro abogado o asociarse con otros abogados, debe firmar un nuevo contrato que incluya a los nuevos abogados. Usted, el Cliente, también tiene derecho a consultar con cada abogado que trabaje en su caso y cada abogado es legalmente responsable de representar sus intereses y es legalmente responsable de los actos de los otros abogados involucrados en el caso.

6. Usted, el Cliente, tiene derecho a saber de antemano cómo deberá pagar los gastos y los honorarios legales al final del caso. Si paga un depósito por adelantado para los costos, puede hacer preguntas razonables sobre cómo se ha gastado o se gastará el dinero y cuánto queda sin gastar. Su abogado debe darle una estimación razonable sobre los costos futuros necesarios. Si su abogado acepta prestarle o adelantarle dinero para preparar o investigar el caso, tiene derecho a saber periódicamente cuánto dinero ha gastado su abogado en su nombre. También tiene derecho a decidir, después de consultar con su abogado, cuánto dinero se gastará para preparar un caso. Si usted paga los gastos, usted tiene derecho a decidir cuánto gastar. Su abogado también debe informarle si el honorario se basará en el monto neto recuperado o en el monto recuperado menos los costos.

7. Usted, el Cliente, tiene derecho a que su abogado le informe sobre las posibles consecuencias adversas si pierde el caso. Esas consecuencias adversas pueden incluir el dinero que podría tener que pagar a su abogado por los costos y la responsabilidad que podría tener por los honorarios, costos y gastos de los abogados de la otra parte.

8. Usted, el Cliente, tiene derecho a recibir y aprobar una declaración final al finalizar el caso antes de pagar cualquier dinero. La declaración debe indicar todos los detalles financieros de todo el caso, incluyendo la cantidad recuperada, todos los gastos y una declaración precisa de los honorarios de su abogado. Hasta que apruebe la declaración final, su abogado no puede pagar dinero a nadie, ni siquiera a usted, sin una orden apropiada del tribunal. Usted también tiene derecho a que todos los abogados o bufetes de abogados de su caso firmen esta declaración final.

9. Usted, el Cliente, tiene derecho a preguntarle a su abogado a intervalos razonables cómo está progresando el caso y a que el abogado le responda estas preguntas en lo mejor de su capacidad.

10. Usted, el Cliente, tiene derecho a tomar la decisión final con respecto al acuerdo de liquidación de un caso. Su abogado debe notificarle todos los ofrecimientos del acuerdo de liquidación antes y después del juicio. Los ofrecimientos durante el juicio deben comunicarse de inmediato y debe consultar con su abogado si acepta un acuerdo de liquidación. Sin embargo, usted debe tomar la decisión final de aceptar o rechazar un acuerdo de liquidación.

11. Si en algún momento usted, el Cliente, cree que su abogado ha cobrado un honorario excesivo o ilegal, usted tiene el derecho a informar el asunto a la Asociación de Abogados de California, la agencia que supervisa la práctica y el comportamiento de todos los abogados en California. Para obtener información sobre cómo comunicarse con la Asociación de Abogados de California, comuníquese con la asociación de abogados local. Cualquier desacuerdo entre usted y su abogado sobre los honorarios puede llevarse a los tribunales y es posible que desee contratar a otro abogado para que lo ayude a resolver este desacuerdo. Por lo general, las disputas de honorarios deben manejarse en una demanda por separado, a menos que su contrato de honorarios prevea el arbitraje.

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EXHIBIT 9

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Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.
Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. [Charles F. Palmer](#), Judge. Reversed and remanded. (Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

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Opinion

[BOREN](#), P.J.

***1** We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the “**prevailing** party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

FACTS²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a “residual bonus.” A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus. Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees \$0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from \$455 to \$35,719. The court awarded plaintiffs’ counsel attorney fees of \$881,715. The court rejected plaintiffs’ claim under PAGA for lack of standing, because plaintiffs left defendants’ employ before PAGA took effect in 2004.

*2 Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court’s award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court’s award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs “could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees.”

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court’s award of \$881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.³

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of \$307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants’ July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for \$2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs’ request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants’ view, the “catalyst” theory is inapposite because no public interest was vindicated by plaintiffs’ lawsuit.

THE TRIAL COURT’S RULING

*3 The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the prevailing parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings; these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of \$346,947.

DISCUSSION

1. Appeal and Review

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not prevail on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. Overview of § 218.5

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or employers, whichever is the prevailing party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. The Catalyst Theory

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.⁴ It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

*4 The doctrine "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." (*Graham, supra*, 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation.” (*Graham, supra*, 34 Cal.4th at pp. 560–561.)

“ ‘A plaintiff will be considered a “successful party” where an important right is vindicated “by activating defendants to modify their behavior.” ’ ” (*Graham, supra*, 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham*, the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, “implicated an issue of public safety, and [] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards.” (*Id.* at pp. 577–578.)

4. Plaintiffs’ Right to Recover Attorney Fees

Plaintiffs originally brought suit in 2004 “on behalf of themselves and the general public.” They requested attorney fees pursuant to § 218.5. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the prevailing party under § 218.5, we import the definition used in the Code of Civil Procedure (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a prevailing party as “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (*Code Civ. Proc.*, § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § 218.5, plaintiffs were not the prevailing party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § 218.5, plaintiffs argue that the theory should apply, based on defendants’ July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § 218.5, which mandates an award of attorney fees to the “prevailing party.” Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

*5 The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants’ 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts “not only to determine the lawsuit’s catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit.” (*Graham, supra*, 34 Cal.4th at p. 576.) Plaintiffs cannot be a “successful party” if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs’ lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra*, 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year’s end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the “catalyst” theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor’s constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a \$1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit “ ‘that genuinely provide[d] a public benefit.’ ” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. Defendants’ Right to Recover Attorney Fees

Section 218.5 is a reciprocal attorney fees statute that requires an award of fees to the “prevailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 218.5 when they filed suit. Defendants were the prevailing parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [prevailing party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not prevail on any claims.

*6 Plaintiffs contend that their claims for fees under § 218.5 were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the prevailing party under § 218.5. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § 218.5 lists only one remotely pertinent exception: “This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.”⁵ Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who prevail on their minimum wage or overtime compensation claims.

Section 218.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the employer to become the prevailing party in the litigation. Defendants are the prevailing party under § 218.5, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.⁶

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the prevailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 218.5 will be referred to in this opinion as § 218.5.

² The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

³ Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount plaintiffs are entitled to

reasonable fees for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- * Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

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EXHIBIT 10

2011 WL 5979937
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC-09-484879). | Nov. 30, 2011.

Attorneys and Law Firms

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Opinion

[NEEDHAM](#), J.

***1** Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to [Labor Code section 218.5](#), after the court granted respondent's motion for summary judgment. Appellant contends: (1) [Labor Code section 218.5](#) did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under [Labor Code section 1194](#); (2) the court should have apportioned the attorney fees between appellant's unpaid wages claim and her constructive termination claim, for which no attorney's fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was "owed wages" and was "owed for accrued paid time off," and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu's "conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment." In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and "reasonable attorney's fees, pursuant to [Labor Code Section 218.5](#)." Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not **prevail** on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the **prevailing** party, was eligible to recover its reasonable attorney fees and costs.²

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the **prevailing** party and entitled to recover its fees and costs under [Labor Code section 218.5](#). Café Tiramisu requested \$36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

*2 Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under [Labor Code section 218.5](#), which authorizes recovery by the **prevailing** party, because her action was for overtime wages governed by [Labor Code section 1194](#), which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of \$36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) [Labor Code section 218.5](#) was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. Recovery of Attorney Fees Under [Labor Code Section 218.5](#)

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to [Labor Code section 218.5](#).³ [Section 218.5](#) provides in pertinent part: "In any action brought for the *nonpayment of wages*, fringe benefits, or health and welfare or pension fund contributions, the court *shall* award reasonable attorney's fees and costs to the **prevailing** party if any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of [section 218.5](#) was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to [Labor Code \[sections\] 226.7 and 227.3](#)." [Section 226.7](#) refers to pay for time worked during mandated meal periods, and [section 227.3](#) refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the **prevailing** party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. ([Code Civ. Proc. § 1032, subd. \(a\)\(4\)](#).)

Third, Maria expressly requested attorney fees and costs pursuant to [section 218.5](#) upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees*, and costs of suit." (Italics added.)

*3 Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the **prevailing** party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.⁴

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled*. Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages*, constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

*4 Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the **prevailing** party to recover attorney fees. (*Earley*, at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: “The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars employers from relying on section 218.5 to recover fees in any action for *minimum* wages or *overtime* compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for ‘wages, fringe benefits, or health and welfare or pension fund contributions.’ [Footnote omitted.]” (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley, supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.⁵

B. Apportionment Among Causes of Action

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its “refusal to pay [her] wages owed.” As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria “wages.”

*5 Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. Apportionment as to Other Plaintiffs

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the “deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases.” She also states: “respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court.”

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: [SIMONS](#), Acting P.J., and [BRUINIERS](#), J.

Footnotes

- ¹ The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.
- ² Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under [Labor Code section 206.5](#). In August 2011, we affirmed the judgment.
- ³ Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- ⁴ Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "
- ⁵ It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

EXHIBIT 11

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,

v.

SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, [S. Charles Wickersham, J.](#), granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, [Haller, J.](#), held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, [S. Charles Wickersham](#), Judge. Affirmed in part and reversed in part.

Opinion

[HALLER, J.](#)

***1** Cecilia Csaszi sued her former employer, Sharp Healthcare¹ (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. ([Code Civ. Proc.](#), §§ 473, 1008.) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. ([Lab.Code](#), § 218.5.) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

FACTUAL AND PROCEDURAL SUMMARY

In March 1996, Sharp hired Csaszi as a utilization review/quality assurance nurse responsible for evaluating patients for discharge at Tri-City Medical Center. Two and one-half years later, Csaszi's supervisors readjusted the workloads of Csaszi and a co-worker. Csaszi was unhappy about the change in her assignment, and complained about what she believed was unfair treatment. In March 1999, Csaszi was given several written notices regarding perceived problems with her performance and the need to improve to avoid being terminated. Two months later, in May 1999, Sharp terminated Csaszi, stating she had failed to properly perform her job assignments and acted in an improper manner toward other health care employees.

In December 1999, Csaszi filed a complaint against Sharp, alleging (1) employment discrimination claims (wrongful termination in violation of public policy, unlawful discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), and wrongful demotion in retaliation for complaining about racial discrimination); and (2) a claim for the failure to properly pay "on-call" wages in violation of [Labor Code section 201](#).

Sharp moved for summary adjudication on Csaszi's discrimination claims on the grounds that Csaszi could not establish she was performing her job in a satisfactory manner, Sharp had legitimate, nondiscriminatory reasons for terminating Csaszi, and Csaszi had no evidence that Sharp's stated reasons were a pretext for unlawful discrimination. Csaszi's attorney, Michael W. Loker, did not file an opposition to that motion, even though (as detailed below) Loker told Csaszi that he *had* filed an opposition.

On November 22, 2000, the court granted Sharp's summary adjudication motion, ruling that Sharp met its burden to establish a legitimate reason for Csaszi's termination and Csaszi failed to present any evidence that the proffered reason for the termination was untrue or pretextual.

***2** On the date scheduled for trial on her remaining claim, Csaszi appeared with attorney Loker, and informed the trial court that she wished to terminate Loker. The trial court granted the request and, over Sharp's objections, granted Csaszi's request for a 90-day trial continuance.

On December 14, 2000, Csaszi, represented by new counsel William Evans, filed a [Code of Civil Procedure section 1008](#) motion ([section 1008](#)), requesting the court to reconsider its summary adjudication ruling. The court denied the motion, finding the motion was not timely (it was filed more than 10 days after the summary adjudication order was entered) and Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion.

On March 9, 2001, a court trial began on Csaszi's remaining claim for unpaid wages relating to her on-call time. After considering all the evidence (which will be detailed below), the court found Csaszi failed to meet her burden to show she was entitled to unpaid wages for her on-call time.

The next month, on April 6, 2001, Csaszi moved for relief from the summary adjudication order under [Code of Civil Procedure section 473](#) ([section 473](#)). In support, Csaszi submitted her declaration, the declaration of her former attorney (Loker), and proposed responsive papers to Sharp's summary adjudication motion. The court denied the [section 473](#) motion, stating Csaszi "made no showing that a judgment, dismissal, order, or other proceeding has been taken against her as a result of her or her attorney's mistake, inadvertence, surprise, or excusable neglect, as is required by the section."

Sharp then moved for its attorney fees as the prevailing party on the FEHA and unpaid wage claims. The court initially granted the motion on both grounds, but after oral argument, concluded that Csaszi's "discrimination case was not totally groundless" and therefore awarded only those fees pertaining to the unpaid wage claim (\$20,269) based on [Labor Code section 218.5](#).

On appeal, Csaszi challenges the denial of her motions to vacate the summary adjudication and the court's rulings pertaining to the unpaid wage claim.

DISCUSSION

I. Motion for Reconsideration

Csaszi first contends the court abused its discretion in denying her motion to reconsider the summary adjudication order under [section 1008](#), which permits a court to revoke a previous order based on new or different facts and an adequate justification for the failure to previously produce those facts. The contention is unavailing.

^[1] First, the motion was untimely. [Section 1008](#) requires that a reconsideration motion be brought “within 10 days after service upon the party of written notice of entry of the order...” (See *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310.) Sharp served written notice of entry of the order on November 22, 2000, and Csaszi filed her reconsideration motion 22 days later, on December 14, 2000.

*3 ^[2] Additionally, the trial court properly denied the motion on the basis that Csaszi “fail[ed] to set forth any ‘new or different facts, circumstances, or law’ that would affect the outcome of” the summary adjudication motion. Csaszi did not proffer any new facts or law relevant to the summary adjudication ruling. Instead, she focused exclusively on explaining the circumstances of her prior attorney’s failure to adequately represent her. These circumstances do not constitute the type of “new or different facts” that permit a reconsideration of the trial court’s order under [section 1008](#).

II. Section 473 Ruling

Csaszi alternatively contends the trial court erred in denying her [section 473](#) motion seeking to vacate the summary adjudication order because of her attorney’s neglect.

A. Relevant Facts

In moving for relief under [section 473](#), Csaszi requested the trial court to vacate the summary adjudication order because the motion was granted without the benefit of her opposition papers and the failure to file an opposition was caused by her attorney’s misconduct. In support, she submitted her own declaration and copies of facsimiles (faxes) received from attorney Loker, which set forth the following facts:

Csaszi retained Loker in September 1999. Loker thereafter filed the complaint and, in April 2000, “began discovery requests.” In May 2000, Loker notified Csaszi he had attended a case management conference, and the trial date was scheduled for October 20, 2000. During the next two months, Csaszi made numerous attempts to contact Loker, but Loker did not return any of Csaszi’s telephone calls or respond to her written correspondence. In August 2000, Csaszi’s husband went to the superior court and discovered that Sharp had obtained a continuance of the trial to December 1, 2000.

On September 7, 2000, Loker called Csaszi and told her Sharp wanted to take her deposition. Csaszi expressed her concern about being unable to contact Loker, but Loker did not explain why he failed to respond to her calls and letters, and said only that he now intended to “move” on Csaszi’s case. Csaszi thereafter met with Loker on two separate days to prepare for her deposition. Sharp deposed Csaszi on three different dates, and each time Loker was present to represent her.

On October 12, Sharp filed its summary adjudication motion, but Loker did not tell Csaszi of this filing. Loker thereafter scheduled depositions of three Sharp employees, but these depositions were postponed for unspecified reasons and later rescheduled to October 30. On October 26, Csaszi met with Loker to review her deposition transcript, and she also gave Loker \$1,000 to pay for the three upcoming Sharp employee depositions. On that date, Loker also informed Csaszi about Sharp’s summary adjudication motion for the first time. Loker told her he would be filing an opposition to the summary judgment motion, but did not tell her the opposition was due on October 26.

*4 On October 30, Csaszi met with Loker to determine why the Sharp employees’ depositions were cancelled that morning. During that meeting Loker did not tell Csaszi that he had filed an ex parte application to continue the hearing on the summary judgment motion.

Ten days later, on November 9, Loker faxed Csaszi a note stating that he was in the library and that he would:

“[F] ile our response in opposition to the summary judgment today and argument is on [November] 17th, for which you will be present. Contrary to my message yesterday, I do not need your signature at this time, but I do need to see you Saturday, and I need you to drop off today the filing fee for the opposition to the Summary Judgment, payable to the Clerk of the Superior Court, in the amount of \$116. Also, the copies of your deposition are payable at this time, because I am using them in our opposition, in the amount of \$615.46, which should be by separate check, made payable to this office.... Therefore, though I need not, and cannot meet today (*because of the fact that I am in the law library today all day working on the opposition*), please drop off two drafts for the filing fee and deposition copy fee, in the amounts noted respectively. Also please leave a time in which we may meet Saturday, if you are not otherwise occupied. *I am optimistic.*” (Italics added.)

Csaszi thereafter wrote the requested checks, but Loker was not in his office when she delivered them. Csaszi telephoned Loker on a daily basis for the next eight days, but was unable to reach him and Loker did not respond to these calls. In the early morning of November 17 (the date scheduled for oral argument on the summary adjudication motion), Csaszi received a fax from Loker stating:

“The court announced yesterday that it will review the briefs submitted and rule telephonically on 22 Dec. (on the summary judgment). *I will fax you our opposition if you haven’t received.* Therefore there are no hearings today. P.S. *There was no charge for filing the opposition, a rule change.* You may ‘void’ that check, which I will destroy. Tx.” (Italics added.)

In fact, Loker never filed an opposition. Further, the applicable rules have never required a party opposing a summary judgment to pay a fee. (See Super. Ct. San Diego County, Fee Schedule & Forms List .)

In response to this fax, Csaszi repeatedly attempted to contact Loker, but was unable to reach him. Csaszi then directly contacted the superior court, and learned from the court that a trial call on her remaining claim was scheduled for December 1, 2000. The morning of December 1, Loker faxed Csaszi a note stating there was no hearing and that he intended to meet with her during the weekend to discuss the overtime pay claim. Csaszi nonetheless attended the trial call, and at the hearing, the court said that Loker was scheduled to call the court at 9:30 a.m. Csaszi confirmed that Loker was still her attorney.

*5 That weekend, Csaszi met with Loker and discussed the unpaid wage claim, but Loker refused to discuss the court’s summary adjudication ruling. The next day, Csaszi appeared at court with a written statement stating that she wanted to obtain new counsel, and the court granted the motion.

In support of her [section 473](#) motion, Csaszi also submitted Loker’s declaration which stated in relevant part: “I did not prepare an opposition to Defendant Sharp’s motion for summary adjudication on the discrimination claims. I did not feel that Csaszi would prevail on the discrimination claims and I felt that to oppose Sharp’s motion might impair her credibility on the remaining issues dealing with the overtime claim and that she would incur additional costs in opposing the discrimination part of the case. However, I was apparently unable to adequately convey my feelings regarding her chances of prevailing on these issues to her. I thought I had convinced her of my recommendations prior to the scheduled opposition to Sharp’s summary adjudication motion. She did inform me that she wanted to proceed with her discrimination claims at the December 4, 2000, hearing. [¶] There was no fault attributable to Plaintiff in any failure to make a timely filing of the opposition to Defendant’s Motion For Summary Adjudication.”

B. Legal Analysis

Under [section 473](#), a party may potentially seek two types of relief for orders entered as a result of an attorney’s neglect or mistake: one that is mandatory and one that is discretionary. (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1486, 37 Cal.Rptr.2d 575 (*Metropolitan Service*).)

First, under the mandatory provision, a court “shall” grant relief whenever an application for relief meets the six-month statutory time period *and* the motion is “accompanied by an attorney’s sworn affidavit attesting to his or her mistake,

inadvertence, surprise, or neglect” (§ 473; see *In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438, 1442, 96 Cal.Rptr.2d 546.) “The purpose of this law is to relieve the innocent client of the burden of the attorney’s fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.” (*Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575.)

^[3] This mandatory relief provision is inapplicable here because Loker, Csaszi’s former attorney, did not “attest[] to [a] mistake, inadvertence, surprise, or neglect....” Instead, in his affidavit, attorney Loker said he did not file an opposition because he made the tactical decision not to oppose the motion. This assertion does not satisfy the statute’s requirement that the attorney admit a “mistake, inadvertence, surprise, or neglect.” (§ 473, see *Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575 [mandatory relief provisions apply “if the attorney *admits* neglect”, italics added].)²

^[4] But even if a party cannot satisfy section 473’s mandatory relief requirements, the party may obtain relief under the statute’s discretionary provisions. Specifically, a court “may” grant relief if the moving party shows an order was taken against him or her because of the attorney’s *excusable neglect*. (§ 473; see *Metropolitan Service, supra*, 31 Cal.App.4th at pp. 1486-1487, 37 Cal.Rptr.2d 575.) Generally, conduct falling below the professional standard of care is considered inexcusable and therefore discretionary relief cannot be granted based on such conduct. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 895, 187 Cal.Rptr. 592, 654 P.2d 775 (*Carroll*); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, 68 Cal.Rptr.2d 228.) Csaszi asserts Loker’s conduct in failing to oppose the summary judgment was the result of professional incompetence. Therefore Loker’s conduct was not “excusable” under section 473.

*6 However, an exception to the rule requiring a showing of excusable neglect applies if the party establishes the attorney’s neglect was of an extreme degree amounting to “‘positive misconduct.’” (*Carroll, supra*, 32 Cal.3d at pp. 898-899, 187 Cal.Rptr. 592, 654 P.2d 775; see *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 72-73, 28 Cal.Rptr.2d 350.) “‘Positive misconduct is found where there is a total failure on the part of counsel to represent his client.’” (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584, 286 Cal.Rptr. 739; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738-739, 216 Cal.Rptr. 300.) The attorney’s conduct is said to obliterate the existence of the attorney-client relationship and therefore cannot be imputed to the client. (*Carroll, supra*, 32 Cal.3d at p. 898, 187 Cal.Rptr. 592, 654 P.2d 775 [“‘[a]n attorney’s authority to bind his client does not permit him to impair or destroy the client’s cause of action or defense,’” quoting *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353].)

Carroll held an attorney who “grossly mishandled” a document production did not engage in “‘positive misconduct’” because he otherwise acted on behalf of his client in the litigation including attending his client’s deposition, propounding and timely responding to interrogatories, propounding requests for admissions, settling with one of the defendants, and timely filing a section 473 motion. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) *Carroll* contrasted these circumstances with the situations in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 38 Cal.Rptr. 693 and *Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d 347, 66 Cal.Rptr. 240, where the courts found attorney misconduct had effectively deprived a party of representation. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) In *Daley*, the plaintiff’s attorney abandoned his client by failing to communicate with the plaintiff, serve necessary parties, and appear at critical hearings. (*Daley v. County of Butte, supra*, 227 Cal.App.2d at pp. 391-392, 38 Cal.Rptr. 693.) In *Orange Empire*, the defendant’s attorney failed to assert a defense, appear at the trial, or file relief from a default judgment within the statutory period. (*Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d at p. 354, 66 Cal.Rptr. 240.)

We conclude the circumstances here fall within the *Daley-Orange Empire* line of cases. Although Loker filed the complaint and was initially involved in some limited discovery, Loker completely abandoned Csaszi at a critical time by failing to file an opposition to the summary adjudication motion. Further, by falsely telling Csaszi that he was filing, *and had filed*, an opposition to the summary adjudication motion, Loker did more than abandon his client—he affirmatively precluded Csaszi from protecting herself and seeking other counsel to file an opposition or seeking timely section 1008 relief. Loker additionally continued to affirmatively harm Csaszi’s interests when he asserted in his declaration in support of her section 473 motion that his decision not to file the summary judgment motion was a tactical decision, an assertion that is flatly contradicted by his own words reflected on the faxes sent to his client. This false assertion prevented Csaszi from obtaining mandatory relief under the statute.

*7 In light of Loker’s misrepresentations to Csaszi and his submission of a declaration that contradicts his written correspondence to his client, Loker’s activities amounted to positive misconduct justifying relief under section 473. In so

concluding, we are unpersuaded by Sharp's reliance on a list of the various contacts between Loker and Csaszi during the relevant times. If anything, Loker's sporadic contacts with Csaszi made the situation worse by misleading Csaszi into believing he was taking care of her interests. (See *Fleming v. Gallegos*, *supra*, 23 Cal.App.4th at p. 73, 28 Cal.Rptr.2d 350 [trial court erred by failing to find attorney abandonment where plaintiff's "attorneys displayed an unwillingness to either prosecute her lawsuit or to cease representing her"].) Further, these contacts do not show a lack of abandonment, instead they reveal merely that Loker remained Csaszi's attorney of record. *Carroll* does not require that an attorney-client relationship be formally severed before positive misconduct may be proven.

Although a [section 473](#) motion lies within the sound discretion of the trial court, " 'the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citation.] The law strongly favors trial and disposition on the merits. Therefore any doubts in applying [section 473](#) must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343, 4 Cal.Rptr.2d 195; see *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1180-1181, 75 Cal.Rptr.2d 809.) Applying these principles here, we conclude the trial court abused its discretion in failing to vacate the summary adjudication based on Csaszi's showing that her counsel engaged in "positive misconduct."

¹⁵¹ We note that Sharp does not argue, nor does the law permit, this court to sustain the trial court's denial of the [section 473](#) motion on the alternate ground that Csaszi's proposed opposition to the summary adjudication motion does not raise a triable issue of fact. In considering the propriety of a court's ruling on a [section 473](#) motion, an appellate court is limited to the question whether the court abused its discretion in granting or denying the motion, and may not reach the substantive issue as to whether the position proffered by the party seeking relief has merit. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 786-787, 59 Cal.Rptr.2d 332; see 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 184 at p. 692, 59 Cal.Rptr.2d 332.)³

Finally, we reject Sharp's argument that the trial court properly denied the [section 473](#) motion because the motion constituted an "end-run" around [section 1008](#) governing reconsideration motions. Because Csaszi satisfied the requirements of a [section 473](#) motion, the fact that the motion was not timely under [section 1008](#) does not defeat the grounds for granting the motion under [section 473](#).

III. Unpaid Wage Claim

*8 Csaszi next contends the court erred in failing to find in her favor on the unpaid wage claim, which was tried before the court sitting without a jury.

The evidence at trial showed that Csaszi was assigned to on-call shifts during which she was given a pager and was responsible for answering telephone calls pertaining to patients discharged outside of regular business hours. Sharp paid its on-call employees \$2.50 per hour for time spent on-call but not actually working, i.e., being available for a call. For time spent actually answering a call (known as "call-back time"), Sharp paid its employees one and one-half times the employee's regular hourly rate of pay, regardless whether this time reflected overtime work. Csaszi was paid \$2.50 for each hour that she reported she was on-call, and would have been paid her overtime rate if she had reported any time answering calls.

The essential basis of Csaszi's unpaid wages claim at trial was that Sharp was required to pay her time and one-half for her on-call time (when she was not actually answering calls) instead of \$2.50 because this time was devoted primarily to her employer's interests. In support, Csaszi relied on federal law providing that an employee should be fully compensated for on-call time if the time is spent " 'primarily for the benefit of the employer and his business.' " (*Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132, 65 S.Ct. 165, 89 L.Ed. 118.)

To show that her on-call time was spent primarily for Sharp's benefit, Csaszi testified that when she was on-call she was unable to attend to her personal activities and she was paged "very frequently." She said that during her entire on-call period, she would sit in a room with a telephone, facsimile machine and documents needed to perform her job duties. Csaszi claimed she could not shop, cook, sleep, travel, interact with her family or otherwise engage in any personal activities. Csaszi sought \$40,380, calculated as the total number of on-call hours multiplied by the time and one-half rate subtracted by the amount she

was paid per hour (\$2.50). Csaszi had no record of the time she actually responded to calls, explaining that she never identified this time on her timesheets because she did not understand how to do so.⁴

In contrast to this evidence, Sharp presented the testimony of its human resource director who said that employees were instructed on the manner in which they should report call-back time and that the employees did not need to limit their activities while waiting for a call. Sharp employees corroborated this testimony. These employees testified that while on-call, they wore pagers and attended to various personal activities, including cooking, shopping, attending church services, and entertaining. The pagers given to the employees had a range of at least 250 miles, and therefore the employees were free to travel throughout Southern California. Csaszi's co-workers testified they received varying numbers of calls while on-call, which averaged two to four per week, and that they knew how to claim this call-back time on their timesheets. The employees were required to respond to a pager within a 15- or 20-minute period. The employees were always paid time and one-half for the time they were actually answering a call.

***9** After considering the evidence, the court stated: "The issue to be decided is whether the requirements of being on-call as a discharge planner precluded [Csaszi] from using the time effectively for her own purposes, thus entitling her to back wages. [Citations.] [¶] The Court finds that although [Csaszi] may have subjectively believed that she needed to avoid engaging in personal activities while on-call, the evidence shows that the job duties of being on-call did not require her to do so. The fact that Ms. Csaszi elected not to engage in personal activities while on-call may be laudable, but it does not transform the on-call time to working time compensable under statute. Both the written policies of the employer as well as the actions of the employees indicate that the express and implied agreement was that employees would be paid \$2.50 for time spent on-call but not actually working and one and one-half times their regular hours rate for time spent actually working while on-call. [¶] Based on the above-stated findings and the fact that [Csaszi] did not offer any evidence specifying the dates or hours she actually worked while on-call, the Court finds that [Csaszi] has failed to meet her burden to show that she is entitled to back wages...."

^[6] We find no error. Although there is no California law directly on point, federal law sets forth appropriate standards for determining Csaszi's claim to additional wages for on-call time. Under this law, an employee must be fully compensated for on-call time spent primarily for the employer's benefit, and the question whether the time is spent primarily for the employer depends on numerous factors and a consideration of these factors in the context of the particular circumstances of the case. (See *Armour & Co. v. Wantock*, *supra*, 323 U.S. at p. 133; *Berry v. County of Sonoma* (9th Cir.1994) 30 F.3d 1174, 1183.) Although no single factor is dispositive, the predominant considerations are the agreement of the parties and the degree to which the employee is free to engage in personal activities. (*Owens v. Local No. 169, Assn. of Western Pulp & Paper Workers* (9th Cir.1992) 971 F.2d 347, 350-354.) The court must balance the factors permitting personal pursuits against the factors restricting personal pursuits to determine whether the employee is "so restricted that he is effectively engaged to wait." (*Berry v. County of Sonoma*, *supra*, 30 F.3d at p. 1183.)

Applying these principles, the trial court found Sharp's evidence credible, and concluded that the time Csaszi spent on-call was not time that was required to be spent predominately for the employer's benefit. Substantial evidence supports the court's factual conclusion. The court, as the finder of fact, was entitled to reject Csaszi's contrary evidence.

In nonetheless challenging the court's factual conclusions, Csaszi contends that Sharp's agreement to pay \$2.50 during on-call hours "amounted to an admission that [Sharp] maintained control over the employees" and therefore the trial court was required to find as a matter of law that Sharp was under a mandatory obligation to pay the same pay rate that it applied for call-back work.

***10** This argument is unsupported factually and legally.

First, the fact that Sharp paid employees \$2.50 per hour to be available to respond to phone calls was not an admission that the time spent was primarily for Sharp's benefit. Instead, Sharp's human resources director specifically testified that employees were paid for being on-call as "an incentive for carrying the pager and being available on call." She explained the pay was "additional compensation that was paid to carry the pager, to be available during a specific time should additional work be needed by that individual." She emphasized that during this waiting time, the "time is not controlled [by Sharp]" and that employee "is free to move around, engage in personal activities."

Csaszi's position is also legally unsupported. Csaszi relies solely on *Paniagua v. City of Galveston, Texas* (5th Cir.1993) 995 F.2d 1310 and *Berry v. County of Sonoma, supra*, 30 F.3d at p. 1178. In *Paniagua*, the court specifically rejected the identical argument asserted here-that an employer's agreement to compensate employees for the inconvenience of being on call "automatically render[s] the time spent on standby 'working time'...." (995 F.2d at p. 1317.) In *Berry*, the court noted that an employer's agreement to provide "at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work," but the court made clear that this was merely one of many factors in the overall analysis. (*Berry v. County of Sonoma, supra*, 30 F.3d at p. 1181 .)

The trial court here expressly noted the evidence showing that Sharp paid \$2.50 for on-call waiting time, but stated that based on the totality of the circumstances, this payment was merely compensation for the inconvenience of carrying a pager and did not reflect that the time spent by on-call employees was for the employer's benefit. Substantial evidence supported the trial court's conclusion.

Csaszi failed to establish that the trial court erred in reaching its factual conclusions with respect to the unpaid wage claim or that the court erred in applying these factual findings to the applicable legal principles.

IV. Attorney Fees

^[7] The trial court awarded \$20,269 in attorney fees to Sharp under [Labor Code section 218.5](#), which provides in relevant part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."⁵

Csaszi contends the court erred in awarding fees under this section because the applicable statute is [section 1194](#), which contains a "one-way" fee provision, permitting attorney fees only for a prevailing employee and not for a prevailing employer. [Section 1194](#), subdivision (a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance ..., including interest thereon, reasonable attorney's fees, and costs of suit."

*11 Both [sections 218.5](#) and [1194](#) potentially apply to an action seeking overtime wages, but establish different attorney fees rules. In *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 95 Cal.Rptr.2d 57, the court noted the potential conflict between the code sections, and concluded the Legislature intended that [section 1194](#) alone applies to recovery of attorney fees for overtime compensation claims, even though such claims could be construed as seeking payment of wages under [section 218.5](#). In a well-reasoned decision, the court explained that the only reasonable interpretation of the Legislature's one-way fee shifting rule in [section 1194](#) "would be one which bars employers from relying on [section 218.5](#) to recover fees in any action for *minimum* wages or *overtime* compensation. [Section 218.5](#) would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained for 'wages....' [¶] Such a harmonization of these two sections is fully justified. An employee's right to wages and overtime compensation clearly have different sources. Straight-time wages ... are a matter of private contract between the employer and employee. Entitlement to overtime compensation, on the other hand, is mandated by statute and is based on an important public policy.... 'California courts have long recognized [that] wage and hour laws "concern not only health and welfare of the workers themselves, but also the public health and general welfare." ... [¶] There can be no doubt that the one-way fee-shifting rule in [section 1194](#) was meant to 'encourage injured parties to seek redress-and thus simultaneously enforce [the minimum wage and overtime laws]-in situations where they otherwise would not find it economical to sue.' [Citation.] To allow employers to invoke [section 218.5](#) in an overtime case would defeat that legislative intent and create a chilling effect on workers who have had their *statutory* rights violated. Such a result would undermine statutorily-established public policy. That policy can only be properly enforced by a recognition that [section 1194](#) alone applies to overtime compensation claims." (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1430, 95 Cal.Rptr.2d 57.)

We agree with the *Earley* court that when an employee seeks overtime wages, the attorney fees rules are exclusively set forth in [section 1194](#). However, that principle is inapplicable here because Csaszi never alleged, or sought to prove at trial, that Sharp failed to pay her for overtime work. Instead, Csaszi brought her claim to enforce Sharp's alleged agreement that it would pay time and one-half for time spent working outside of the hospital's physical environment and that on-call time constituted "working" under established legal principles. The claim at issue concerned solely a matter of private contract

between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of [section 1194](#). Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under [section 218.5](#).

*12 Csaszi alternatively argues that even if [section 218.5](#) is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at “the initiation of the action.” (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees “if *any* party to the action requests attorney’s fees and costs upon the initiation of the action .” (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be “awarded its costs of suit and attorney fees incurred therein....” That statement is sufficient to satisfy [section 218.5](#)’s requirement that attorney fees be requested at the “initiation of the action.”

DISPOSITION

We affirm the portions of the judgment finding in Sharp’s favor on Csaszi’s claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi’s first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp’s motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: [KREMER](#), P.J., and [BENKE](#), J.

Footnotes

- ¹ Although it appears that the correct name of Csaszi’s former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi’s complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant’s name.
- ² Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether [section 473](#)’s mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare [English v. Ikon Business Solutions, Inc.](#) (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with [Avila v. Chua](#) (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)
- ³ We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a [section 473](#) motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi’s proposed opposition filings contained in the appellate record.
- ⁴ Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.
- ⁵ All further statutory references are to the Labor Code.

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EXHIBIT 12

2009 WL 4718721

Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S-07-2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

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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 13

05-30-2013 | 05:13 PM | Author: [Robin Shea](#)

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)



Earlier, I busted on "my own side" by giving [four reasons why employers shouldn't be so quick to fire their employees](#). To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid *legal* claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

***Most people consider a lawsuit an "act of war."** They probably *were* on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to sue! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. *AWKWARD!* No wonder they've turned on you.

***Some employees really, sincerely do believe the company was in the right.** Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really *were* very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

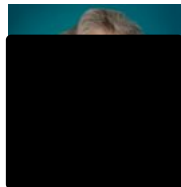
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably *don't* have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents **employees** in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the [Employment and Labor Law Insider](#) for additional insights from [Robin Shea](#), a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

For more information about LexisNexis products and solutions connect with us through our [corporate site](#).

Tags: [employee lawsuits](#)

EXHIBIT 14

April 29, 2014

HUFF
POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning -- make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

Follow Janice Harper on Twitter: www.twitter.com/Janice_Harper

6 people are discussing this article with **11 comments**

Comments are closed on this entry.

Highlighted Most Recent Oldest Most Faved My Conversations

Pippen
287 Fans

2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

FAVE SHARE MORE

DHC

SUPER USER · 56 Fans

1

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

FAVE SHARE MORE

kjk326

2 Fans

Excellent article, right on topic. I went through this nightmare & found just how chilling & hostile a formerly friendly environment can become overnight. People who were your close friends hesitate to talk to you and avoid being seen with you. Your every move is put under the microscope and twisted into some type of bad behavior while the person who committed the illegal act is lauded and promoted and you are made to feel like a social outcast at best and I say this even though in the end I prevailed. You are left so emotionally drained, sadly it seems to be the American way; forget ethics, it's the dollar that prevails. Most of all I don't know how HR people sleep at night when they defend someone they know clearly committed an illegal act,

10 JAN 2012 8:34 PM

FAVE SHARE MORE

ARTICLE AUTHOR

Janice Harper

HUFFPOST BLOGGER · 218 Fans

Thank you for sharing your experience. I think it's significant that you say in the end you prevailed -- sadly, that is the sixth myth -- that it will all be worth it. It rarely is. The toll on the worker who pursues an employment claim is enormous, and few attorneys, no matter how skilled, adequately prepare plaintiffs for what's up ahead. I'm so sorry you had to go through it.

Yet we have made great advances in working conditions in the U.S. in part due to lawsuits, and there are cases where workers are left with no recourse but to turn to the courts. In those cases, the more a person knows what to expect and how to be prepared, the better the emotional outcome. Thank you again for sharing your story.

10 JAN 2012 8:55 PM

FAVE SHARE MORE

3 PEOPLE IN THE CONVERSATION

Read Conversation →

noahmarder

512 Fans · Exposing the regressive lies, one by one

There is no justice in this country. What else is new? Risk/reward probably favors stealing from your employer rather than suing them. At least with theft, your career is ruined only if you get caught. You also have a better chance of stealing significant money than of winning anything but an airtight case. I don't see a moral problem either, so long as what is stolen doesn't exceed the damage done by the employer, plus the effort required for the theft, plus the chance of being caught multiplied by the penalty

for being caught. It is the employer, after all, who has taken away any legal remedies through the retaliation mechanisms described in the article.

10 JAN 2012 9:09 PM

FAVE SHARE MORE

Pippen

287 Fans

If you think all of that is bad apply it to Texas where employment is an "at will" state. Another way of putting this would be outright slavery and the slave master can fabricate reality on how they feel that morning and your life is forever changed.

America sets itself apart from 3rd world countries with the argument that we have a

- 1 Superior Justice System
- 2 Freedom of religion
- 3 Separation of Church and State
- 4 Opportunity to pursue your capitalist dreams of career and family
- 5 That taxes pay for your well being (roads, FDA, national safety etc..)
- 6 National security (threat of invasion and subjugation by an enemy rule...)
- 7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

FAVE SHARE MORE

EXHIBIT 15



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

August 4, 2025

CASE ASSUMPTIONS

Class Members	110
Opt Out Rate	1%
Opt Outs Received	3
Total Class Claimants	107
Subtotal Admin Only	\$6,742.59

Flat Fee Total \$6,500.00

For 110 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: Bates v. DR Hotel Employee Leasing, Inc., Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Laura Solorzano

Firm: The Spivak Law Firm

Contact Number: (818) 582-3180

Email: laura@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 **110** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	15		\$30.80
NCOA (USPS)	\$20.00	1		\$20.00
Total				\$550.80

* 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	110		\$11.00
Notice Packet & Opt-Out Form	\$1.35	110		\$148.50
Estimated Postage (up to 2 oz.)*	\$0.90	110		\$99.00
Static Website	\$200.00	1		\$200.00
Total				\$1,558.50

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	1		\$55.00
Skip Tracing Undeliverables	\$1.00	17		\$16.50
Remail Notice Packets	\$1.00	14		\$13.50
Estimated Postage	\$0.90	14		\$12.15
Programming Undeliverables	\$50.00	2		\$100.00
		Total		\$197.15

Database Programming / Processing Opt-Outs, Deficiencies or Disputes				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Deficiency & Dispute Letters	\$10.00	0		\$0.00
Case Manager	\$85.00	2		\$170.00
		Total		\$740.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	2		\$270.00
Mail Class Checks *	\$0.90	107		\$96.30
Estimated Postage	\$0.70	107		\$74.90
		Total		\$941.20

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item Estimate	
Case Supervisor	\$75.00	1	\$75.00	
Remail Checks (Postage Included)	\$2.00	22	\$44.94	
Case Associate	\$55.00	3	\$165.00	
Reconcile Uncashed Checks	\$85.00	4	\$340.00	
Conclusion Reports	\$115.00	2	\$230.00	
Case Manager Conclusion	\$85.00	3	\$255.00	
Final Reporting & Declarations	\$115.00	3	\$345.00	
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1	\$1,300.00	
Total			\$2,754.94	

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$6,742.59



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. 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 16

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: BATRES v. DR HOTEL EMPLOYEE LEASING LLC
Tuesday, July 29, 2025

Requesting Attorney:

Laura Solorzano
The Spivak Law Firm
laura@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	110
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:	\$2,795.00
Notification & Mailing:	\$411.80
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$2,523.20
Case Conclusion:	\$895.00

Estimated ILYM Fees & Expenses: \$6,950.00

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: BATRES v. DR HOTEL EMPLOYEE LEASING LLC

Tuesday, July 29, 2025

Requesting Attorney's Name: Laura Solorzano

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	4	\$480.00
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	\$40.00	1	\$40.00
Toll Free Customer Service Representative	Flat Fee	\$65.00	1	\$65.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$2,795.00

NOTIFICATION & MAILING				
Fulfillment of Notice, English and Spanish	Per Piece	\$1.50	110	\$165.00
USPS First Class Postage	Per Piece	\$0.80	110	\$88.00
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	17	\$33.00
Storage, Photocopies, Deliveries	Flat Fee	\$125.80	1	\$125.80

Subtotal \$411.80

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: BATRES v. DR HOTEL EMPLOYEE LEASING LLC

Tuesday, July 29, 2025

Requesting Attorney's Name: Laura Solorzano

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$1.00	110	\$110.00
USPS First Class Postage	Per Piece	\$0.70	110	\$77.00
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	11	\$16.50
Reminder Postcard for Uncashed Checks	Per Piece	\$0.90	33	\$29.70
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 \$2,523.20

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Process Unclaimed Funds	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$895.00

Estimated ILYM Fees & Expenses: \$6,950.00

ILYM Group's Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the permissible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 17

CASE NAME: BATRES v DR HOTEL EMPLOYEE LEASING LLC

Requesting Intake Assistant: Laura Solorzano
Plaintiff or Defense: Plaintiff
Firm Name: The Spivak Law Firm
Telephone: (818) 582-3180
Email: laura@spivaklaw.com

Date: August 1, 2025
Prepared By: Timothy Phillips
 50 Corporate Park, Irvine CA 92606
 Tim@CPTGroup.com
Direct Number: (818) 415-2703
Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Class Size: 110	Undeliverable Mail Rate: 10%
Opt-Out Filing Rate: 1.5%	Payment Option: Check
No. of Checks Issued: 108	Unclaimed Funds: SCO
Language Translation Services: Yes	Postage Total: \$275.58
Settlement Website: Static Website	Grand Total: \$11,914.51
Notice Procedures: Mail	CPT'S DISCOUNTED FEE: \$8,500.00

The services and numbers reflected herein are estimates based on the information provided by counsel at the time of this Bid. If the actual services and numbers are different, our cost estimate will change accordingly. Client expressly acknowledges and agrees that estimated fees and costs may fluctuate and agrees to pay for any such increases to such estimates as if set forth herein.

The attached Terms and Conditions are included as part of and incorporated by reference to our cost proposal. By accepting our cost proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

After receiving the data, CPT will scrub all records to eliminate duplicates and anomalies; this process is designed to achieve a higher success percentage in delivering the Class Notice. Each Class Member will receive a unique mailing ID that will be utilized for all administrative purposes. If necessary, CPT will translate the court-approved Notice documents and opt-out form into Spanish. The Settlement website will publish the full Notice and all relevant case documents for downloading.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
Sub Total:			\$1,945.00

DIRECT MAIL NOTIFICATION

CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible. A detailed notice and a one-page opt-out form will be mailed in English and Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
XML Lex ID Skip Trace	\$0.85	11	\$9.35
Print & Mail Notice Packets	\$1.50	110	\$165.00
First-Class Postage (up to 2 oz.)*	\$1.03	110	\$113.30
Sub Total:			\$612.65

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

According to CPT's historical data, 10% of the notices are returned as undeliverable. Upon notification from USPS, CPT performs a skip trace to locate a current address. Typically, 70% of the undeliverable notice packets are eligible for remailing with an updated address.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	11	\$5.50
Skip Trace for Best Address	\$1.00	10	\$10.00
Print & Remail Notice Packets	\$1.50	8	\$12.00
First-Class Postage (up to 2 oz.)	\$1.03	8	\$8.24
Sub Total:			\$95.74

OPT-OUT PROCESSING

CPT will thoroughly examine the submissions to identify and remove any duplicates, fraudulent responses, or otherwise invalid submissions. CPT will process and verify opt-outs, objections, and other responses submitted by class members. Deficient responses will be sent a follow-up notice, offering the class member a chance to cure.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Outs	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out Processing	\$2.50	2	\$4.13
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.74	1	\$0.74
Review & Process Deficiency Responses	\$10.00	1	\$10.00
Sub Total:			\$321.37

CLASS MEMBER SUPPORT

CPT will establish a toll-free telephone number equipped with interactive voice response (IVR) capabilities and live customer support representatives. Live support will be available during regular business hours, Monday to Friday, 9:00 AM to 5:30 PM, Pacific Time (PT). The dedicated case phone number shall be operational for a maximum of 120 days following the disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	22	\$66.00
Sub Total:			\$366.00

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholding processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	108	\$10.84
Sub Total:			\$445.84

DISTRIBUTION SERVICES

CPT will establish a 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF). Upon Final Approval, CPT will perform the required settlement payment calculations, and once approved by the parties, CPT will issue a (MICR) check to all eligible claimants. CPT will also issue an IRS Form 1099 and/or IRS Form W-2 when applicable. CPT utilizes the bank's Payee Positive Pay to prevent check fraud and performs monthly account reconciliations for the QSF bank account. Undeliverable checks are skip-traced to obtain a current address and are remailed accordingly. Requests for check reissues will be processed throughout the check-cashing period. CPT's administration of the QSF will continue for a maximum duration of one year following the initial distribution of funds.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	108	\$270.88
First-Class Postage (up to 1 oz.)	\$0.74	108	\$80.18
Project Supervisor: Account Reconciliation	\$150.00	12	\$1,800.00
Update Undeliverable Checks Database	\$0.50	5	\$2.71
Skip Trace for Best Address	\$1.00	5	\$5.42
Remail Undeliverable Checks	\$2.50	5	\$12.50
First-Class Postage (up to 1 oz.)	\$0.74	5	\$3.70
Re-Issue Checks as Required	\$5.00	5	\$25.00
First-Class Postage (up to 1 oz.)	\$0.74	5	\$3.70
Reminder Check Postcard	\$0.40	87	\$34.67
Postage for Postcard	\$0.62	87	\$53.74
Sub Total:			\$4,282.49

TAX REPORTING & SETTLEMENT CONCLUSION

CPT prepares annual tax reporting on behalf of the QSF and Federal and State taxes in accordance with current state and federal regulations. All parties will be furnished with weekly and final reports. A declaration attesting to due process will be provided to all parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Sub Total:			\$3,040.00

*CPT will file Federal and California taxes in accordance with current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	23	\$3.45
Project Manager: Reporting & Remittance	\$95.00	2	\$190.00
Project Supervisor: Review of Report	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$11.98	1	\$11.98
Add'l Account Recons	\$150.00	3	\$450.00
Sub Total:			\$805.43

Total Administration Costs: \$11,914.51

Courtesy Discount: -\$3,414.51

CPT'S DISCOUNTED FLAT FEE: \$8,500.00

TERMS AND CONDITIONS

These Terms and Conditions ("Terms and Conditions") are made a part of, and incorporated by reference into, any Bid presented by CPT Group, Inc. ("CPT") to Client. Each of Client and CPT is a "Party" to this Agreement, and collectively, the "Parties".

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Agreement"** means these Terms and Conditions and the Bid.
 - c) **"Applicable Laws"** means all applicable local, state and federal laws, ordinances, rules and regulations.
 - d) **"Approved Bank"** means any financial institution that is insured by the Federal Deposit Insurance Corporation.
 - e) **"Bid"** means a proposal, statement of work, order form, and/or schedule for Services (including any and all addendums, exhibits, or amendments thereto) provided by CPT to Client.
 - f) **"Case"** means the case referred to in the attached Bid and/or the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the caption of the applicable Court Order.
 - g) **"Class"** means Members and putative Members collectively.
 - h) **"Client"** means the party or parties engaging CPT for Services as set forth in the Bid, namely Plaintiff Counsel and/or Defense Counsel.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either Party to the other Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other Party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing Party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more Parties To The Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named Party and/or Parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney(s) of record for the Defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Member"** means an individual who is eligible under the Case or Class to receive a communication about their pending legal rights under the matter and/or designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons or other parties in the representative action so designated or addressed therein.
 - o) **"Member Content"** means all Member written document communications relating to the Case, including claim forms, opt-out forms, and/or objections, which may contain Member Data.
 - p) **"Member Data"** means proprietary or personal data regarding Members under this Agreement.
 - q) **"Parties To The Case"** shall mean collectively Defendant(s) and Plaintiff(s) as defined in the Settlement Agreement or Court Order.
 - r) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - s) **"Plaintiff Counsel"** means the attorney(s) of record for Plaintiff(s) in the Case, and/or upon certification by the Court the attorney(s) of record designated to represent the Class.
 - t) **"Products"** means any and all CPT Services and work product resulting from Services.
 - u) **"Qualified Settlement Fund" or "QSF"** means a bank account established pursuant to U.S. Department of Treasury Regulations §1468B-1.
 - v) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Members; (ii) setting up a QSF with an Approved Bank; (iii) management of disbursement of funds from the QSF to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - w) **"Settlement Agreement"** means the contract between Parties To The Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Members.
 - x) **"Settlement Amount"** means the total dollar amount agreed to between Parties To The Case to resolve the Case to mutual satisfaction.
 - y) **"Software"** means any and all of CPT's software applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - z) **"Transmission Methods"** means the secure authorized manner to send Member Data and/or Wire Information as specified on a schedule or exhibit hereto.
 - aa) **"Term"** means the period commencing on the date set forth on the Bid and continuing until the date of final judgment (if a settlement) or upon completion of all Services as set forth in the Bid.
 - bb) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access and use Member Data for the purposes permitted under this Agreement and shall only transmit Member Data and/or Wire Information to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Member Data provided under this Agreement. Client further warrants that any Member Data, Wire Information, or other content, data, materials or information it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disenabling codes which could adversely affect Member Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **CPT Obligations.** CPT will (i) maintain appropriate safeguards designed to protect Member Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Member Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Parties To The Case, Members, Plaintiff Counsel or Defense Counsel as applicable.
4. **Security.** Client and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any Member Data in its possession or control under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such Member Data; (c) protect against unauthorized access to or use of such Member Data that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such Member Data in connection with its disposal.
- a) **Incident Notification.** In the event a Party discovers that Member Data relating to the Case is the subject of (i) any unauthorized acquisition, loss, access or use and/or (ii) an actual or suspected breach concerning such Party's systems (items (i) and/or (ii) a **"Security Incident"**), or a Party has a reasonable belief that a Security Incident has occurred or is at risk of occurring, such Party will promptly but no later than forty-eight (48) hours of its discovery of such circumstances, inform the other Parties in the event of such Security Incident, and shall utilize best efforts to assist the other Parties to mitigate the effects of such Security Incident.
 - b) **Response Procedures.** In the event of a Security Incident, the breached party shall (i) cooperate with any reasonable investigation concerning the Security Incident by the other Parties, regulators and/or law enforcement; and (ii) cooperate with the other Parties to comply with Applicable Laws concerning such Security Incident, including any notification to affected individuals. The Parties acknowledge that the breached party in any Security Incident shall be the Party responsible for

- any and all remedies and costs under Applicable Laws concerning such Security Incident, unless such breach occurred due to another Party's actions hereunder, in which instance such party shall be comparatively responsible for all remedies and costs. In no event will any Party serve notice or otherwise publicize a Security Incident without the prior written consent of the other Parties. The Parties shall reasonably cooperate and coordinate with each other to respond to the Security Incident, including with regard to the content of notification to affected individuals.
6. **Qualified Settlement Fund Account.** When the Case has a Settlement Amount CPT shall be authorized to establish one or more QSF bank accounts at an Approved Bank if and as applicable to the Services as set forth in the Bid. The amounts held at the Approved Bank under this Agreement are at the sole risk of Defendant. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
 7. **Fees and Payment.** Pricing for Services is as stated on the Bid, and Client agrees to pay CPT in the amounts set forth on the Bid. Client will be invoiced per the schedule set forth in the Bid, and payment of fees will be due within 30 days after the date of the invoice, except where the Bid or terms of the Settlement Agreement or Court Order expressly prescribes other payment dates. All fees set forth in a Bid are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% per month (or the highest rate allowable by law, whichever is lower) on the outstanding balance from the date due until the date of actual payment, which such late charge(s) may be charged against the QSF account if incurred in connection with Services provided pursuant to administration of a settlement. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation. In connection with CPT's administration of a QSF, unless otherwise stated in the Settlement Agreement or Court Order concerning disbursement of unclaimed funds in the QSF account, CPT reserves the right, after one (1) year of issuance of disbursements to Members, to classify any remaining balance in such QSF account as additional administrative fees payable to CPT until such time as the QSF account balance becomes zero (\$0.00), and thereafter close such account. Client is aware that CPT may receive financial benefits, including discounts on certain banking services and competition for services that ensure eligibility for FDIC deposit insurance or in connection with the establishment of QSF accounts. Client agrees that any such financial benefit may be retained by CPT as additional compensation for CPT's services.
 8. **Term and Termination.**
 - a) **Term.** The Term is set forth in the Bid. The Agreement may be renewed by mutual written agreement of the parties.
 - b) **Termination for Cause.** Either Party may immediately terminate this Agreement if the other Party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching Party's receipt of written notice describing the breach in reasonable detail.
 - c) **Bankruptcy Events.** A Party may immediately terminate this Agreement if the other Party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) **Effect of Termination.** Immediately following termination of this Agreement, upon written request, Member Data may be retrieved via the secure FTP site in the same format in which the Member Data was originally input into the Software, at no additional charge. Alternatively, Member Data can be returned in a mutually agreed format at a scope and price to be agreed upon. CPT will maintain a copy of Member Data and Member Content for no more than four (4) years following the date of the final check cashing deadline for Members under the Settlement Agreement, after which time any Member Data and Member Content not retrieved will be destroyed.
 - e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
 9. **Confidentiality.** Each Party agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such Party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such Party uses to protect its own confidential information; provided, however, that such Party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
 - a) **Compelled Disclosure.** If receiving Party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such Party shall (i) promptly notify the other Party, (ii) reasonably cooperate with the other Party in such Party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each Party is advised by its counsel in writing is legally required to be disclosed.
 - b) **Remedies.** If either Party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other Party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as monetary damages.
 10. **Intellectual Property.** CPT retains all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. CPT does not claim any ownership rights to Member Data.
 11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "**Covered CPT Parties**") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "**Damages**") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Member Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
 12. **Warranties.** Each Party represents and warrants to the other Party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such Party; (iii) the Agreement is a legally valid and binding obligation of such Party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE
 13. **Liability.**
 - a) **Liability Cap.** EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CLIENT AND/OR THE PARTIES TO THE CASE TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT,

REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
 - b) Force Majeure. Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such Party's reasonable control, provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
 - c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
 - d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the Parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
 - e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by the Parties.
 - f) Assignment. Neither Party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other Party's prior written consent; provided, however, either Party, without the consent of the other Party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such Party, where the responsibilities or obligations of the other Party are not increased by such assignment and the rights and remedies available to the other Party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
 - g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
 - h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical

data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such Applicable Laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other Party as set forth on the Bid or at such other address as may hereafter be furnished in writing by either Party hereto to the other Party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each Party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither Party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT may use subcontractors to perform Client-specific Services; provided, however, that CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either Party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Acceptance. If, when requested in writing by Client, CPT then provides any Service to Client, whether or not such Services were specified in the original Bid, these Terms and Conditions shall apply to the provision of such Services and be deemed accepted and approved by Client concerning such Services.
- q) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 18



Reference No. 20250730-PJI-06

July 30, 2025

Laura Solorzano
The Spivak Law Firm
1875 Century Park East Fl 7
Los Angeles CA 90067

RE: *Batres v. Dr Hotel Employee Leasing LLC*

Dear Laura,

Thank you for this opportunity to provide a quote for your above-captioned settlement. Using the parameters you described, Simpluris' total estimated cost is \$9,420. As a courtesy, we are offering a \$500 discount, for a discounted total of \$8,920.

Please let me know if you have questions. I look forward to this opportunity to work together.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Patrick J. Ivie". The signature is stylized with a large "P" and "I".

PATRICK J. IVIE
Chief Revenue Officer

m: 310-995-6455
o: 714-975-5260
e: pivie@simpluris.com



3194-C Airport Loop Drive, Costa Mesa, CA 92626
www.simpluris.com | 1 (800) 779 - 2104



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104
www.simpluris.com

Estimate Number:	20250730-PJI-06	Prepared By:	Patrick J. Ivie
Estimate Date:	7/30/2025	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	10/28/2025	Email:	pivie@simpluris.com

Attorney: **Primary Contact**
Laura Solorzano
Firm: The Spivak Law Firm
Email: laura@spivaklaw.com

Attorney: **Opposing Counsel Contact**
Firm:
Email:

**Case Name: Batres v. Dr Hotel Employee Leasing LLC
Class and PAGA Settlement**

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	110	Undeliverable Rate:	10%
Claims Rate:	N/A	Mail Skip Trace Success Rate:	85%
Opt-out Rate:	1%	Call Rate:	4%
Language(s) for Communication	EN/SP	Average Call Length:	4 Minutes
Reminder Mailing:	Postcard	Fund Distribution:	Simpluris
Unclaimed Funds:	Escheat	Number of Distributions:	1
State(s):	CA	Tax Year(s):	1
Length of Administration:	9 Months		

Case Setup

- Undertake postings on Simpluris website of key documents as ordered by the Court (e.g. orders and the Settlement Agreement)
- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$110.00	1	\$110.00
Case Document Web Postings	\$225.00	1	\$225.00
Database Manager - Initial Data Analysis	\$125.00	1	\$125.00
Total:			\$460.00

Notice and Communications

- Spanish Translation of the Notice
- 14-page Notice Packet: Opt-Out Form, Dispute Form & Objection Form, sent by First Class US Mail, in English and Spanish
- Single Postcard Reminder Mailing

Category	Unit Value	# of Units	Total
Spanish Translations - assuming 7,000 words	\$0.25	7,000	\$1,750.00
Bilingual Notice Packet - assuming 28 images	\$6.00	110	\$660.00
Postage	\$0.72	110	\$79.20
NCOA/CASS/LACS	\$0.14	110	\$15.40
Undeliverable Processing and Skip Trace	\$0.32	11	\$3.52
Remail Notice (assuming 85% skip trace success)	\$7.00	9	\$65.45
Remail Postage	\$0.72	9	\$6.73
Single Postcard Reminder Mailing	\$0.18	110	\$19.80
Postage	\$0.59	110	\$64.90
Mailing Supervisor	\$55.00	2	\$110.00
Total:			\$2,775.00

Contact Center

- Establish case-specific toll-free number and 24/7 IVR
- Assuming 4-minute calls

Category	Unit Value	# of Units	Total
Call Center Set Up	\$350.00	1	\$350.00
Toll Free Monthly Maintenance	\$95.00	9 Months	\$855.00
IVR (includes toll-free number charges)	\$15.00	1	\$15.00
Subtotal			\$1,220.00

Administration

- Process incoming class and counsel communications, opt-outs, disputes, and objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	1	\$125.00
Project Manager	\$110.00	1	\$110.00
Dispute Processing	\$1.75	6	\$9.63
Opt-out Processing	\$1.75	2	\$3.50
Reporting to Counsel (hours)	\$100.00	2	\$200.00
Total:			\$448.13

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Uncashed checks to escheat to State of California in the name of the aggrieved employee
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	2	\$250.00
Disbursement Manager - Data Validation	\$90.00	1	\$90.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Reconciliation and Maintenance	\$125.00	9	\$1,125.00
Print & Mail Distribution Check and Tax Docs	\$0.60	110	\$66.00
Postage	\$0.72	110	\$79.20
Process Returned Checks (assuming 5%)	\$0.20	6	\$1.20
Skip Trace Search Undeliverable Checks	\$0.12	6	\$0.72
Remail Checks (includes postage)	\$1.70	6	\$10.20
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
QSF Annual Tax Reporting and Reconciliation	\$850.00	1	\$850.00
Distribution Manager	\$90.00	1	\$90.00
Total:			\$4,237.32

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc.	\$45.00	1	\$45.00
Project Manager-Wrap-up Final Issues	\$110.00	1	\$110.00
Total:			\$280.00

Total Estimated Cost of Administration:	\$9,420
Less Client Courtesy Discount:	-\$500
Discounted Total:	\$8,920

Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit of settlement funds with such institutions, including without limitation, placement fees accruing on the outstanding balance of such deposits, earnings credits, and discounts on certain banking services/fees. Such amounts shall be retained by Simpluris to offset administration costs including FDIC deposit insurance recordkeeping. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

10. Rights in Data: Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

11. Electronic Communications: During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

12. Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

13. Waiver: Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

14. Termination: Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 8 - Limitation of Liability; Disclaimer of Warranties, Section 10 – Rights in Data, and Section 15- Jurisdiction, 17 -Confidentiality, and Section 18 – Indemnification.

17. Confidentiality: Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

18. Indemnification: Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, in connection with , or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.

19. Severability: If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Database Administration: Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

21. Entire Agreement: These Terms and Conditions and the Proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 19

EXHIBIT 20

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

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
10 (UNLIMITED JURISDICTION)

11 ALINA GHRDILYAN; EVGENIA
12 SULTANIAN; and all others similarly situated,

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

16 RJ FINANCIAL, INC., a California
17 corporation; RAMIL ABALKHAD, an
18 individual; and DOES 1 through 50, inclusive,

19 *Defendants.*

Action filed: 01/28/2010
CMC: 05/10/2010, 8:30 a.m.
FSC: Not set
Trial: Not set
Dept: 36, Hon. Gregory Alarcon

26 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
27 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

THE
SPIVAK
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

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

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

22 **SECOND CLAIM FOR RELIEF**

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

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

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

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

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

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

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

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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

Respectfully submitted,

THE SPIVAK LAW FIRM



Date: February 23, 2010

By:

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

EXHIBIT 21

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

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

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

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

19 IT READS NOW, (READING:)

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

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

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

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659