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8 Attorneys for Plaintiff(s),
9 ARMANDO ASCENCIO, and all others similarly situated

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

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

17 *Plaintiff(s),*

18 vs.

19 MONARCH LITHO INC., a California
20 corporation, ROBERT LOPEZ, a natural
21 individual; and DOES 1–50, inclusive,

22 *Defendant(s).*
23

Case No. 24STCV27524

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



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1 **DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF ARMANDO**
2 **ASCENCIO'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
3 **SETTLEMENT**

4 I, DAVID SPIVAK, declare as follows:

5 2. I am an attorney duly licensed to practice law in the State of California and am an
6 attorney of record for Plaintiff Armando Ascencio ("Plaintiff") in his lawsuit against Defendants
7 Monarch Litho Inc. and Robert Lopez ("Defendants"). Plaintiff and Defendants are collectively
8 referred to as the "Parties."

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

11 4. The Class Action and PAGA Settlement Agreement and Class Notice (the
12 "Settlement") is attached hereto as **Exhibit 1**. The Settlement does not provide that any portion
13 of the consideration paid or deposited by the Defendants may revert to the Defendants.

14 ***Factual and Procedural Background***

15 5. Defendants employed Plaintiff as a mechanic in California from September o1999
16 until July 26, 2024.

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

22 7. **Lawsuit.** On October 21, 2024, Plaintiff filed a Class Action Complaint in the Los
23 Angeles County Superior Court, Case No. 24STCV27524, against Defendants on behalf of
24 himself and others similarly situated, alleging causes of action on a class-wide basis for: (1)
25 Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 221, 510, 1194, 1197, and
26 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide
27 Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198
28 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time
Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et*
seq.). On December 19, 2024, Plaintiff filed his First Amended Complaint adding a claim under
the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA").
A true and correct copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy



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of Plaintiff's First Amended Complaint is attached hereto as **Exhibit 4**.

8. **Investigation.** On December 13, 2024, Plaintiff requested that Defendants informally disclose documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations periods applicable to Plaintiff's claims. Plaintiff also requested a reasonable, randomly selected sample of Defendants' time, payroll, and expense records, and related personnel records.

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

10. **Sampling.** Defendants contended that they employed 111 putative class members during the period of October 21, 2020 to March 10, 2025. Defendants produced the records of 21.60% of the putative class members. There were records for 24 employees in the sample. Plaintiff chose the sample. The sample was randomly selected. The sample consisted of time and payroll records in Microsoft Excel sheets, and related records.

11. **Plaintiff's Data Analyst.** Plaintiff retained James Toney, a data analyst, to analyze the sample. Plaintiff also employed the Raosoft⁷ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 20.0%, a confidence level of 95%, and a population size of 111, the Raosoft Sample Size Calculator recommended a sample of 24. A true and correct copy of the results from the Raosoft Sample Size Calculator are attached as **Exhibit 5** (Raosoft Sample Size Calculator

⁷ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software 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 results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically
2 reliable.

3 12. **Mediation.** On March 10, 2025, following much of the foregoing informal
4 discovery and exchange of information, the Parties participated in a mediation session presided
5 over by Mediator Joe Lovretovich, an experienced class action mediator. During the mediation,
6 the Parties had a full day of productive negotiations and reached an agreement on a class-wide
7 settlement after a mediator's proposal. During the mediation sessions, each side, represented by
8 his / its respective counsel, recognized the risk of an adverse result in the Action and agreed to
9 settle the Action and all other matters covered by this Agreement pursuant to the terms and
10 conditions of this Agreement.

11 *Similar Actions*

12 13. **Relevant Litigation and Claims.** I am not aware of any class, representative,
13 or other collective action in any other court, in this, or any other jurisdiction, that asserts
14 claims similar to those asserted in this action, on behalf of the class or group of individuals,
15 some or all of whom would also be members of the class to find in this action. I have made
16 a reasonable inquiry of the other members of my law firm and my counsel to determine
17 whether they are aware of any such similar actions. Based on these inquiries, I am aware of
18 no such similar actions. I only discovered the following individual case against Defendants:
19 Flores v. Monarch Litho, Inc., an individual wage and hour case for unpaid overtime wages and
20 related violations.

21 *Ascertainable and Numerous Class*

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

27 15. **Numerosity.** The Settlement Class has sufficiently numerous members to render
28 joinder impractical. No set number is required as a matter of law to maintain a class action. The
California Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that
there are approximately 111 Class Members for the Class Period of October 21, 2020 to March
10, 2025. Plaintiff maintains that it would be impractical and economically inefficient to require



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1 each Settlement Class Members to separately maintain an individual action or be joined as a
2 named plaintiff in this action. In light of these considerations, the Settlement Class' membership
3 is sufficiently numerous. Additionally, there are 89 Aggrieved Employees for the PAGA Period.

4 *Predominant Common Questions*

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

27 *Typicality*

28 17. Plaintiff contends that his claims are typical for the purposes of certifying the
Settlement Class. Plaintiff asserts that he, like absent Class Members was subject to the same
relevant policies and procedures governing his compensation, hours of work and meal and rest
periods. Because Plaintiff contends that he was subject to the same general course of conduct as



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absent Class Members, resolving the common questions as they apply to Plaintiff will determine Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the Class.

Adequacy

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

19. Neither Plaintiff nor Class Counsel have any conflicts of interest with the absent Settlement Class Members. Plaintiff contends that he is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendants during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated his commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative. The declaration of Plaintiff Armando Ascencio on this subject will be filed concurrently with this declaration.

Background of Class Counsel

20. 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.

21. 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.

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



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

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

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

8 a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
9 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
10 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
11 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
12 back pay and gave Plaintiffs a retroactive promotion. *See* "Lawsuit Puts Customs Service on Trial:
13 Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego Union-
14 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.

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

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



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

8 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
9 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
10 Agent, followed by an award of Attorneys' fees and costs.

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

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

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



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

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

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

9 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
10 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
11 court on behalf of nonexempt employees).

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

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

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

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

25 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
26 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
27 action settlement on behalf of medical devices employees).

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

 i. *La Fleur v. Medical Management International, Inc.*, United States District



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1 Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel
2 and granted final approval of class action settlement on behalf of practice managers).

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

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

9 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
10 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
11 on behalf of dairy and agricultural laborers).

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

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

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

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

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

r. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed

1 Class Counsel and granted final approval by this Court of class action settlement involving alleged
2 misclassification of sales employees and unpaid vacation pay).

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

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

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

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

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

20 Caroline Tahmassian's Experience and Qualifications

21 28. Caroline Tahmassian is an associate attorney at the Spivak Law Firm. In 2012, she
22 earned a Juris Doctor degree from Southwestern University School of Law and became an Active
23 Member of the State Bar of California.

24 29. Mrs. Tahmassian joined the Spivak Law Firm in 2013 and has since focused her
25 practice on representation of employees in disputes with their employers, and on wage and hour
26 class and PAGA representative actions specifically involving claims of unpaid wages, unprovided
27 meal and rest breaks, unreimbursed business expenses, improper wage statements, unfair business
28 practices, and related claims, as well as wrongful termination, harassment, family and medical
leave, whistleblowing, discrimination, benefits, and civil rights violations.

30. Mrs. Tahmassian has been assigned as the primary associate in numerous class
and PAGA actions, some of which involved contested class certification motions. A small



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1 sampling of the wage and hour class action cases in which she has recently been counsel of records
2 is as follows: *Villegas v. DLP Management Co., Inc., et al.*, Santa Barbara Superior Court, case
3 no. 21CV04500; *Storm, et al v. Express Employment Agency, et al.*, USDC for the Southern
4 District of California, case no. 3:21-cv-01120-L-JLB; *Perales v. Ships Pizza, Inc., et al.*,
5 Stanislaus County Superior Court, case no. CV-22-004216; *Green v. Magnum Management*
6 *Corporation, et al.*, Orange County Superior Court, case no. 30-2022-01276962-CU-OE-CXC;
7 *Leon v. Davis & Roberts Construction, Inc., et al.*, Fresno County Superior Court, case no.
8 22CECG00407; *Crumpler v. Westco Equities. Inc., et al.*, San Bernardino Superior Court, case
9 no. CIVSB2116331; *Thong, et al. v. Outlook Resources, Inc., et al.*, Los Angeles Superior Court,
10 case no. 19STCV44400; *Stephenson v. O-Ongo Inc., et al.*, San Bernardito Superior Court, case
11 No. CIVDS1805331.

12 ***Class Action Treatment Is Superior***

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

22 ***The Settlement is Presumptively Fair***

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



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1 complexities of the case and uncertainties of class certification and litigation, and a fair result for
2 the Class Members.

3 *Exposure & Risk Analysis*

4 33. At issue in this class and Private Attorneys General Act ("PAGA") action is the
5 liability of Defendants for unpaid wages, unprovided meal periods, unauthorized rest breaks,
6 unreimbursed business expenses, incomplete and inaccurate wage statements, untimely wages,
7 and related violations of the Labor Code and applicable Wage Order. Plaintiff prepared
8 "damages" estimates in advance of the mediation. Plaintiff determined Defendants' maximum
9 possible exposure for restitution and penalties to be approximately \$6,950,717.65 (consisting of
10 \$527,963.15 in unpaid wages, \$1,472,193.66 in missed meal period premium wages,
11 \$1,472,193.66 in missed rest break premium wages, \$195,690.00 in unreimbursed expenses,
12 \$387,700.00 for wage statement penalties, \$439,180.88 for waiting time penalties, and
13 \$2,103,750.00 for civil penalties under PAGA. True and correct copies of the spreadsheets I
14 prepared for mediation of this Action are collectively attached to this declaration as **Exhibit 6**.

15 34. These estimates are in essence "home run" projections that omit data points that
16 will undoubtedly reduce the maximum possible damages award and do not factor in any of the
17 risks involved in litigating this Action. Plaintiff calculated the damages based on the number of
18 workweeks and pay periods provided by Defendants, Plaintiff's reports, and the sample data. *Id.*
19 Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix* campaign
20 and pursue individual release agreements from the Class Members. Plaintiff's Counsel applied
21 discounts to the maximum possible exposure to account for all other risks discussed below. While
22 it is difficult to assign anything but crudely-determined percentages of risk to any of the claims,
23 it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such
24 employees is substantial and alone justifies a significant discount because Defendants would
25 likely by trial have gathered releases from the majority of the Class Members. Based on the
26 difficulties of proof, the Defendants' defenses, and the other attendant risks Plaintiff
27 identifies below, Plaintiff estimates the likely awards at trial should Plaintiff prevail to be the
28 following amounts:

- 26 a. Unpaid wages and liquidated damages with interest in the amount of
27 \$352,003.78;
28 b. Meal period premium wages with interest in the amount of \$588,877.46;



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- c. Rest period premium wages with interest in the amount of \$588,877.46;
- d. Unreimbursed expenses with interest in the amount of \$78,276.00;
- e. Statutory pay stub penalties in the amount of \$155,080.00;
- f. Waiting time penalties in the amount of \$175,672.35; and
- g. Civil penalties in the amount of \$841,500.00.

The total of these amounts is \$2,780,287.06. The Gross Settlement Amount of \$1,600,000.00 is 57.55% of this amount. A settlement for approximately 57.55% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.⁸

35. My initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, I believe a class settlement for \$1,600,000.00 is fair and reasonable.

36. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period required the employees to records their hours worked. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must be recorded. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). Moreover, while Defendants dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly,

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



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1 a large award of penalties seems unlikely with respect to this claim.

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

12 38. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s
13 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a
14 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
15 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
16 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
17 performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
18 or prohibited the employee from taking a proper break, or otherwise failed to release the employee
19 of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a
20 particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D.
21 Cal. 2010) 271 F.R.D. 629, 641. *Id.*

22 39. Defendants contend they did not impede or discourage Plaintiff, or any other
23 employees, from taking their meal or rest periods. Defendants’ policies mandate that employees
24 take at least a 30-minute, uninterrupted meal periods. Accordingly, there is a significant risk that
25 the value of Plaintiff’s meal period claim would be substantially reduced at trial.

26 40. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff’s rest
27 period claim. Employers are not required to record rest periods and such periods are paid.
28 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
accordance with California law. Further, Defendants contend that their written policies on meal
and rest periods are consistent with the Wage Order. Thus, unlike meal periods, where there are
often records showing whether an employee clocked out or not, there is no such evidence to prove



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1 a missed rest period or that the employer refused to authorize and permit one. Managing such
2 claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony
3 and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant
4 caselaw makes such claims risky from a trial management and due process perspective. *Id.*, *See*
5 *Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common
6 questions exist to support class certification, it may be possible to manage individual issues
7 through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015)
8 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

9 41. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
10 Court may consider Plaintiff’s claims as to Defendants’ alleged failure to indemnify for business
11 expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that
12 Defendants required Plaintiff and the Class Members to use their personal items including cellular
13 phones, and failed to indemnify them for these business expenses. Defendants could present
14 evidence that they did not require the employees to use their personal cellphones and that they
15 had an expense reimbursement policy. As such, there is a risk that the Court may consider
16 Plaintiff’s claims to be individual in nature and unfit for class wide resolution.

17 42. **Risks Associated with the Statutory Wage Statement Penalty Claims.** Plaintiff
18 also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties.
19 Under Labor Code section 226, wage statements must include various information, including the
20 applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff’s wage
21 statement claim has the same underlying risks as the above claims, as it is derivative of them. On
22 their face, the wage statements issued by Defendants comply with the requirements of Labor Code
23 section 226.

24 43. **Risks Associated with the Waiting Time Penalties Claims.** Without proof
25 willful behavior, Plaintiff will be unable to recover these penalties.

26 44. **Risks Associated With the PAGA Claim.** As the Operative Complaint makes
27 clear, Plaintiff predicates his PAGA claim on the same Labor Code violations as his other
28 claims. As I state above in connection with Plaintiff’s claims for statutory penalties with regard
to proof Defendants’ intent, knowledge and willfulness, there are serious risks to proving
Defendants acted intentionally, knowingly, and willfully in violating the rights of Class Members
under the Labor Code. Plaintiff calculated the agreed-upon amount of civil penalties by



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1 considering the risks outlined above and that the Settlement already provides substantial
2 payments for the Labor Code violations that the civil penalties claim is predicated on.

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

9 46. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
10 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
11 counsel estimated a maximum possible exposure of approximately \$2,103,750.00 in civil
12 penalties. This estimate did not take into account any of the risks discussed above and assumed a
13 violation for every single pay period. Plaintiff's counsel also assessed multiple penalties for the
14 same pay period for the same alleged violations of different Labor Code provisions and derivative
15 violations. Although two federal district court decisions held that "stacking" PAGA penalties in
16 this fashion may be appropriate to determine the amount in controversy for purposes of removal
17 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
18 multiple PAGA penalties for the same violation for the same pay period under different Labor
19 Code provisions. This may be because the PAGA does not provide for what many employers
20 characterize as claim splitting and not merely stacking.

21 47. I am aware of only two significant awards under the PAGA in a contested
22 proceeding, both issued by federal district courts.⁹ PAGA penalty awards are often small even for
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⁹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58. In this regard, the district court stated,

The plain language of PAGA provides that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a "circumstance" of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'



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egregious, intentional violations of the Labor Code.¹⁰

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

49. **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.* (2009) 171 Cal. App. 4th 796. *Id.* 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 – 111 members - until it is no longer numerous enough for class certification. Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

50. While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation

individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

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

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

¹⁰ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 7**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 8**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.



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

11 *Allocation of the PAGA Payment*

12 51. The settlement of PAGA penalties in the sum of \$100,000.00, of which 65%
13 (\$65,000.00) will be paid to the LWDA and 35% (\$35,000.00) will be distributed to the
14 Aggrieved Employees, is reasonable and appropriate under the circumstances. The Parties
15 negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the Aggrieved
16 Employees. The portion to be paid to the LWDA was not the result of self-interest at the expense
17 of other Aggrieved Employees.

18 *Attorneys' Fees and Costs*

19 52. I intend to request Class Counsel Attorneys' Fees of \$533,333.33 (one-third of the
20 GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently
21 estimate to be approximately \$14,608.62 and will be no more than \$15,000.00 at the conclusion
22 of matters related to the Settlement. In view of my efforts and risks in pursuing this case these
23 amounts are well within the range of reasonableness and thus warrant this Court's preliminary
24 approval. In addition, based on my experience in wage and hour class action matters, fee awards
25 of approximately one-third of the settlement fund are routinely approved as reasonable. I have
26 been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage
27 and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior
28 Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior
Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*,
San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v.*
Southwest Dealer Services, Inc., Los Angeles County Superior Court, Case No. BC439253 (one-



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

53. 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,



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(3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained information from putative class members, met and conferred with 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.

54. 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.

Class Representative Service Payment

55. The Settlement provides that Plaintiff may seek a Class Representative Service Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the risks he 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 his work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, assisting counsel in identifying witnesses, participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay 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 Armando Ascencio's declaration, filed concurrently with mine, provides further information supporting his request for the Class Representative Service Payment.

56. Plaintiff began his investigation and retention of attorneys to pursue the claims at issue on approximately July 30, 2024. Awarding Plaintiff 0.94% of the GSA is entirely reasonable given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In this case,



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1 Plaintiff has devoted several hours of his time advancing the interests of the Class Members and
2 also expects to devote additional hours of his time with Class Counsel overseeing the
3 administration of the Settlement if the Court grants final approval of the Settlement. *See generally*
4 Declaration of Armando Ascencio. Plaintiff has done this by, among other things, retaining
5 experienced counsel, providing them with extensive information about his work history with
6 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
7 issue, assisting them in contacting absent Class Members to gather information, participating in
8 a full day of mediation, foregoing pursuit of his individual claims in favor of a fair class-wide
9 resolution, and being actively involved in the settlement process to ensure a fair result for the
10 Class Members as a whole.

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

26 58. In taking the actions outlined above, Plaintiff has exposed himself to significant
27 risks, including the risk that he could have been ordered to pay Defendants' attorneys' fees and
28 costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that
he could, in the future, face a potentially hostile work environment and worsened career prospects
for suing a prior employer for wage and hour violations and serving as the Plaintiff in a class
action lawsuit. Additionally, Plaintiff has exposed himself to the risk that he could end up



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1 receiving less than Defendants would have paid him at the beginning of the Action via a C.C.P.
2 § 998 offer or other individual settlement offer to drop his class allegations. On many occasions,
3 California courts have ordered wage and hour plaintiffs and would be class representatives to pay
4 outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

- 5 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist.
6 March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be
7 paid by employee for employee's unsuccessful suit for unpaid bonuses). A true
8 and correct copy of the court's order is attached to this declaration as **Exhibit 9**.
- 9 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov.
10 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney's fees and
11 costs to employer for unsuccessful suit for unpaid wages). A true and correct copy
12 of the court's order is attached to this declaration as **Exhibit 10**.
- 13 c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb.
14 18, 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs
15 to the employer for unsuccessful suit for unpaid wages and overtime). A true and
16 correct copy of the court's order is attached to this declaration as **Exhibit 11**.
- 17 d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721
18 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay
19 \$21,180 in attorney's fees and \$1,525.80 in costs to defense counsel for unpaid
20 wages). A true and correct copy of the court's order is attached to this declaration
21 as **Exhibit 12**.

22 Such costs awards are higher than the share of the Net Settlement Amount ("NSA") that Plaintiff
23 stands to receive as a Participating Class Member. It is unfair in view of the substantial risk of an
24 adverse fee or cost award of several thousand dollars that Plaintiff receives less as a reward for
25 taking such a risk. Moreover, we cannot lose sight of the fact that Plaintiff is not a high wage
26 earner. Even the lowest of the cost awards listed above would have devastating consequences for
27 Plaintiff in view of his modest earnings.

28 59. 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,
Participating Class Members will receive a *pro rata* distribution of the Settlement proceeds
proportionate to the period of time he or she worked for Defendants during the Class Period,



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

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

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

26 62. Plaintiff faced the risk that he could face worsened career prospects for suing a
27 former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.
28 *See generally* Declaration of Armando Ascencio. Because he filed a lawsuit in the California
Superior Court, a public record now exists that Plaintiff sued his employer for Labor Code
violations – a fact that won't be lost on prospective employers considering him for a job. Common
sense dictates that an employer will think twice about hiring someone who sued his last employer.



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

9 63. Class Counsel depended on Plaintiff’s input to prosecute this lawsuit. Plaintiff
10 made this case possible for a number of reasons. First, Plaintiff challenged his employers on an
11 unlawful practice that led to Defendants paying a large percentage of the unpaid wages in question
12 plus interest to the remainder of the employees – in spite of the fact that Defendants have ceased
13 majority of their operation in California. Plaintiff provided Class Counsel with detailed
14 descriptions of how Defendants’ business operates, the hours and scheduling of employees, and
15 the nature of the work Class Members performed. *See generally* Declaration of Armando
Ascencio.

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

21 65. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
22 were significant risks (outlined in the preliminary approval motion) to any award on behalf of the
23 Class Members and still Plaintiff achieved a settlement of \$1,600,000.00. This outstanding result
24 calls for significant awards to Plaintiff for making the result possible.

Class Member and Aggrieved Employee Settlement Share Estimates

25 66. **Individual Class Payments.** At \$17.99 per hour (the average Class Members’s
26 hourly wage), the average estimated Individual Class Payment to Participating Class Members is
27 the equivalent of over 464 hours of unpaid wages (the primary remedies sought) (\$8,348.35 /
28 17.99 = 464.05 hours). Thus, this is a result the Class can be proud of in view of the significant



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1 risks.

2 67. The Individual Settlement Payments will be paid to each Class Members based on
3 his or her eligible Work Weeks compared to the total Work Weeks. Because this method
4 compensates Class Members based on the extent of their potential injuries, in that Class Members
5 who worked for Defendants longer would have been subject to more alleged violations, it is fair,
6 adequate, and reasonable. Plaintiff estimates that there are 17,853 Work Weeks for the Class
7 Period. So, each Work Week has a value of approximately \$51.91 ($\$926,666.67 \text{ Net Settlement}$
8 $\text{Amount} / 17,853 \text{ Work Weeks} = \$51.91$). Plaintiff had approximately 196 Work Weeks during
9 the Class Period. Based on this, it is anticipated that Plaintiff will receive an Individual Class
10 Payment of approximately \$10,173.45 as a Participating Class Member ($196 \text{ Work Weeks} \times$
11 $\$51.91 = \$10,173.45$) while the average estimated Individual Class Payment to Participating Class
12 Members will be approximately \$8,348.35. Some Class Members – those who worked more Work
13 Weeks during the Class Period - will receive more, and some less. The highest possible Individual
14 Class Payment to a Participating Class Member (i.e., to those who qualify for all Work Weeks in
15 the Class Period) will be approximately \$13,354.90. The lowest possible Individual Class
16 Payment to a Participating Class Member (i.e., to those who qualify for only one Work Week in
17 the Class Period) will be approximately \$51.91.

18 68. **Individual PAGA Payments.** It is anticipated that the average Aggrieved
19 Employees Individual PAGA Payments will be \$280.90. *Id.* Plaintiff's Individual PAGA
20 Payments, his individual share of 35% of the PAGA Penalties, will be less than that of some
21 absent Aggrieved Employees. Under the Settlement, each Aggrieved Employees will receive a
22 *pro rata* distribution of 35% of the PAGA Penalties proportionate to the number of paychecks he
23 or she had with Defendants during the PAGA Period, compared to the total of all paychecks of
24 all Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiff
25 estimates that there are 3,825 Aggrieved Employees paychecks for the PAGA Period. So, each
26 Aggrieved Employees paycheck from the PAGA Period has a value of approximately \$9.15
27 ($35\% \text{ of } \$100,000.00 \text{ in PAGA Penalties} / 3,825 \text{ Aggrieved Employees paychecks} = \$9.15$). It
28 is anticipated that Plaintiff Armando Ascencio will receive an Individual PAGA Payment of
approximately \$371.53 as an Aggrieved Employee ($41 \text{ paychecks during the PAGA Period} \times$
 $\$9.15 \text{ paycheck value} = \$371.53$) while the average estimated Individual PAGA Payments to an
Aggrieved Employees will be approximately \$393.25 ($\$35,000.00, 35\% \text{ of PAGA Penalties} /$



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1 Aggrieved Employees during the PAGA Period = \$393.25 Individual PAGA Payments). Some
2 Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive
3 more, and some less. The highest possible Individual PAGA Payments to an Aggrieved
4 Employees (i.e., to those who qualify for all paychecks in the PAGA Period) will be
5 approximately \$934.65. The lowest possible Individual PAGA Payments to an Aggrieved
6 Employees (i.e., to those who qualify for only one paycheck in the PAGA Period) will be
approximately \$9.15.

The Notice Packet

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

Administrator Duties

25 70. The duties of the Settlement Administrator are spelled out in the Settlement and in
26 the bid provided by Apex a true and correct copy of which is attached hereto as **Exhibit 15**.

Administration Costs

27 71. With regard to the settlement administration costs provision, it is reasonable.
28



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1 Before agreeing to Apex the Parties sought and reviewed bids from other reputable third-party
2 administrators: (A) Simpluris, Inc. = \$6,500.00; (B) Phoenix Class Action Administration
3 Solutions = \$7,000.00; and C) CPT Group, Inc. = \$8,500.00. A true and correct copy of the bid
4 from Simpluris, Inc. is attached hereto as **Exhibit 16**. A true and correct copy of the bid from
5 Phoenix Class Action Administration Solutions is attached hereto as **Exhibit 17**. A true and
6 correct copy of the bid from A true and correct copy of the bid from CPT Group Class Action
7 Administration is attached hereto as **Exhibit 18**. The bid provided by Apex was the lowest. Thus,
8 the settlement administration costs provision should be given preliminary approval.

9 ***Notice of Settlement to the LWDA***

10 72. Pursuant to Labor Code § 2699(1)(2), Plaintiff has provided notice of this
11 settlement to the LWDA with the filing and service of this motion. A true and correct copy of
12 Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 19**.

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

15 Executed on Thursday, July 24, 2025 at New York, New York.

16 

17

DAVID SPIVAK,
18 Declarant



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EXHIBIT 1

1 DAVID GLENN SPIVAK (SBN 179684)
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7 Attorneys for Plaintiff(s),
8 ARMANDO ASCENCIO, and all others similarly situated
(Additional attorneys for parties on following page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12 **(UNLIMITED JURISDICTION)**

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

16 *Plaintiff(s),*

17 vs.

18
19 MONARCH LITHO INC., a California
corporation, ROBERT LOPEZ, a natural
20 individual; and DOES 1–50, inclusive,

21 *Defendant(s).*

Case No. 24STCV27524

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

Action filed: October 21, 2024
Dept: 12, The Honorable Carolyn
B. Kuhl

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ATTORNEYS FOR DEFENDANT(S)

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Facsimile: 818.986.5147

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Armando Ascencio (“Plaintiff”), individually and on behalf of the “Class” as
3 defined herein, on the one hand, and defendants Monarch Litho Inc. and Robert Lopez
4 (Collectively “Defendants” or “Monarch”), on the other hand. The Agreement refers to Plaintiff
5 and Defendants collectively as “Parties,” or individually as “Party.”

6
7 **1. DEFINITIONS.**

8 1.1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against
9 Monarch Litho Inc. captioned “Armando Ascencio, on behalf of himself, and all others similarly
10 situated, and the general public, and as an ‘Aggrieved Employee’ on behalf of other ‘Aggrieved
11 Employees’ under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs.
12 Monarch Litho Inc., a California corporation, Robert Lopez, a natural individual; and DOES 1
13 through 50, inclusive, *Defendant(s)*,” Case No. 24STCV27524 initiated on October 21, 2024 and
14 pending in Superior Court of the State of California, County of Los Angeles.

15 1.2. “Administrator” means Apex Class Action Administration (“Apex”), the neutral
16 entity the Parties have agreed to appoint to administer the Settlement.

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

21 1.4. “Aggrieved Employee” means a person employed by Defendants in California and
22 classified as a non-exempt, hourly employee who worked for Defendants during the PAGA
23 Period.

24 1.5. “Class” means all persons Defendants employed in California as non-exempt,
25 hourly employees who worked for Defendants during the Class Period.

26 1.6. “Class Counsel” means David Glenn Spivak and Caroline Tahmassian of The
27 Spivak Law Firm.

1 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
2 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
3 expenses, respectively, incurred to prosecute the Action.

4 1.8. “Class Data” means Class Member identifying information in Defendants’
5 possession including the Class Member’s name, last-known mailing address, Social Security
6 number, and number of Class Work Weeks and PAGA Pay Periods.

7 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as
8 either a Participating Class Member or Non-Participating Class Member (including a Non-
9 Participating Class Member who qualifies as an Aggrieved Employee).

10 1.10. “Class Member Address Search” means the Administrator’s investigation and
11 search for current Class Member mailing addresses using all reasonably available sources,
12 methods and means including, but not limited to, the National Change of Address database, skip
13 traces, and direct contact by the Administrator with Class Members.

14 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
15 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
16 Class Members in English with a Spanish translation in the form, without material variation,
17 attached as Exhibit A and incorporated by reference into this Agreement.

18 1.12. “Class Period” means the period from October 21, 2020 to the date the Court
19 preliminarily approves this class action settlement, or the Alternate End Date (as defined in
20 Paragraph 9 below), whichever is sooner.

21 1.13. “Class Representative” means Armando Ascencio, the named Plaintiff in the
22 operative complaint in the Action seeking Court approval to serve as a Class Representative.

23 1.14. “Class Representative Service Payment” means the payment to the Class
24 Representative for initiating the Action and providing services in support of the Action.

25 1.15. “Court” means the Superior Court of California, County of Los Angeles.

26 1.16. “Defendants” means named Defendants Monarch Litho Inc. and Robert Lopez.

27 1.17. “Defense Counsel” means Alfred J. Landegger, Evelyn Zarraga, and James M.

1 Bacon of Landegger Verano, ALC.

2 1.18. "Effective Date" means the date by when both of the following have occurred: (a)
3 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
4 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
5 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
6 one or more Participating Class Members objects to the Settlement, the day after the deadline for
7 filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed,
8 the day after the appellate court affirms the Judgment and issues a remittitur.

9 1.19. "Final Approval" means the Court's order granting final approval of the
10 Settlement.

11 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final
12 Approval of the Settlement.

13 1.21. "Final Judgment" means the Judgment entered by the Court upon Granting Final
14 Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

15 1.22. "Gross Settlement Amount" means \$1,600,000.00 which is the total amount
16 Defendants agree to pay under the Settlement except as provided in Paragraph 9 below, and not
17 including the employer payroll taxes owed on the Wage Portions of the Individual Class
18 Payments. The Gross Settlement Amount will be used to pay Individual Class Payments,
19 Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel
20 Expenses, Class Representative Service Payment and the Administration Expenses Payment.

21 1.23. "Individual Class Payment" means the Participating Class Member's pro rata
22 share of the Net Settlement Amount calculated according to the number of Work Weeks worked
23 during the Class Period.

24 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
25 35% of the PAGA Penalties calculated according to the number of Pay Periods worked during the
26 PAGA Period.

27 1.25. "Judgment" means the judgment entered by the Court based upon the Final
28

1 Approval.

2 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
3 agency entitled, under Labor Code section 2699, subd. (i).

4 1.27. "LWDA PAGA Payment" means the 65% of the PAGA Penalties paid to the
5 LWDA under Labor Code section 2699, subd. (i).

6 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
7 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
8 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
9 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
10 paid to Participating Class Members as Individual Class Payments.

11 1.29. "Non-Participating Class Member" means any Class Member who opts out of the
12 Settlement by sending the Administrator a valid and timely Request for Exclusion.

13 1.30. "Notice Packet" means the Class Notice (Exhibit A), the Election Not to
14 Participate in Settlement form (Exhibit B), the Class Work Week/PAGA Pay Period Dispute form
15 (Exhibit C), and the Objection form (Exhibit D) in English with Spanish translations.

16 1.31. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
17 worked for Defendants for at least one day during the PAGA Period.

18 1.32. "PAGA Period" means the period from October 15, 2023 to the date the Court
19 preliminarily approves this class action settlement, or the Alternate End Date (as defined in
20 Paragraph 9 below), whichever is sooner.

21 1.33. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

22 1.34. "PAGA Notice" means Plaintiff's October 15, 2024 letter to Defendants and the
23 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

24 1.35. "PAGA Penalties" means the total amount of PAGA civil penalties (\$100,000.00)
25 to be paid from the Gross Settlement Amount, allocated 35% to the Aggrieved Employees
26 (\$35,000.00) and the 65% to LWDA (\$65,000.00) in settlement of PAGA claims.

27 1.36. "Participating Class Member" means a Class Member who does not submit a valid
28

1 and timely Request for Exclusion from the Settlement.

2 1.37. "Plaintiff" means Armando Ascencio, the named plaintiff in the Action.

3 1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
4 of the Settlement.

5 1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary
6 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
7 attached as Exhibit E.

8 1.40. "Released Class Claims" means the claims being released as described in
9 Paragraph 6.2 below.

10 1.41. "Released PAGA Claims" means the claims being released as described in
11 Paragraph 6.3 below.

12 1.42. "Released Parties" means: Defendants and each of their former and present
13 officers, directors, owners, attorneys, insurers, employees and agents.

14 1.43. "Request for Exclusion" means a Class Member's submission of a written request
15 to be excluded from the Class Settlement signed by the Class Member. An Election Not to
16 Participate in Settlement form is attached as Exhibit B.

17 1.44. "Response Deadline" means 60 days after the Administrator mails Notice to Class
18 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)
19 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
20 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
21 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
22 the Response Deadline has expired.

23 1.45. "Settlement" means the disposition of the Action effected by this Agreement and
24 the Judgment.

25 1.46. "Work Week" means any week during which a Class Member worked for
26 Defendants for at least one day, during the Class Period.

27 1.47. A Class Work Week/PAGA Pay Period Dispute form is attached as Exhibit C.

1
2 **2. RECITALS.**

3 2.1. On October 21, 2024, Plaintiff commenced this Action by filing a Complaint
4 alleging causes of action against Defendants for failure to pay wages, unauthorized and unlawful
5 wage deductions, failure to provide meal periods, failure to authorize and permit rest periods,
6 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
7 timely pay wages, failure to maintain required payroll records, and related claims. On December
8 19, 2024, Plaintiff filed a First Amended Complaint adding claims pursuant to the Private
9 Attorneys General Act. The First Amended Complaint is the operative complaint in the Action
10 (the “Operative Complaint.”). Defendants deny the allegations in the Operative Complaint, deny
11 any failure to comply with the laws identified in in the Operative Complaint and deny any and all
12 liability for the causes of action alleged.

13 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
14 notice to Defendants and the LWDA by sending the PAGA Notice.

15 2.3. On March 10, 2025, the Parties participated in an all-day mediation presided over
16 by Joseph M. Lovretovich which led to this Agreement to settle the Action.

17 2.4. Prior to the mediation, Plaintiff obtained, through informal discovery, the number
18 of comparable employees, the number of workweeks, the number of pay periods, average rates
19 of pay, sample time records, sample payroll records, written policies, and related information.
20 Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk*
21 *v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail,*
22 *Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

23 2.5. The Courthas not granted class certification.

24 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
25 of any other pending matter or action asserting claims that will be extinguished or affected by the
26 Settlement.

1 **3. MONETARY TERMS.**

2 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
3 Defendants promise to pay \$1,600,000.00 and no more as the Gross Settlement Amount and to
4 separately pay Defendants' share of employer payroll taxes owed on the Wage Portions of the
5 Individual Class Payments. Defendants have no obligation to pay any portion of the Gross
6 Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this
7 Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking
8 or requiring Participating Class Members or Aggrieved Employees to submit any claim as a
9 condition of payment. Notwithstanding the return of funds in the event that Court declines to
10 grant Preliminary Approval and/or Final Approval of the Settlement, none of the Gross Settlement
11 Amount will revert to Defendants.

12 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
13 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
14 the Court in the Final Approval:

15 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
16 Representative of not more than \$15,000.00 (in addition to any Individual Class Payment and any
17 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
18 Member). Defendants will not oppose Plaintiff's request for a Class Representative Service
19 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
20 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
21 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
22 If the Court approves a Class Representative Service Payment less than the amount requested, the
23 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
24 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
25 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

26 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 and
27 1/3%, which is currently estimated to be \$533,333.33 and a Class Counsel Litigation Expenses

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

14 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
15 \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the
16 Administration Expenses are less or the Court approves payment less than \$10,000.00, the
17 Administrator will retain the remainder in the Net Settlement Amount.

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

22 3.2.4.1. Tax Allocation of Individual Class Payments. 10.00% of
23 each Participating Class Member's Individual Class Payment will be allocated to settlement of
24 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
25 reported on an IRS W-2 Form. The remaining 90% of each Participating Class Member's
26 Individual Class Payment will be allocated to settlement of claims proportionately with 50% for
27 interest and 50% for penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject

1 to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members
2 assume full responsibility and liability for any employee taxes owed on their Individual Class
3 Payment. Notwithstanding the treatment of the payments to each Participating Class Member,
4 none of the payments called for by this Agreement, including the Wage Portions of the Individual
5 Class Payments, are to be treated as earnings, wages, pay or compensation for the purpose of any
6 applicable benefit or retirement plan, nor do any payments under this Agreement extend or alter
7 Class Members' or Aggrieved Employees' period of employment for any purpose.

8 3.2.4.2. Effect of Non-Participating Class Members on Calculation
9 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
10 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
11 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

12 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
13 amount of \$100,000.00 to be paid from the Gross Settlement Amount, with 65% (\$65,000.00)
14 allocated to the LWDA PAGA Payment and 35% (\$35,000.00) allocated to the Individual PAGA
15 Payments.

16 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
17 by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties
18 \$35,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
19 the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay
20 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
21 Individual PAGA Payment.

22 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
23 requested, the Administrator will allocate the remainder to the Net Settlement Amount. 100% of
24 the PAGA Penalties are allocated as penalties and not as wages. The Administrator will report the
25 Individual PAGA Payments on IRS 1099 Forms.

1 **4. SETTLEMENT FUNDING AND PAYMENTS.**

2 4.1. Class Work Weeks and Aggrieved Employee PAGA Pay Periods. Based on a
3 review of their records to date, Defendants estimate there are 111 Class Members who collectively
4 worked a total of 17,853 Work Weeks, and 89 of Aggrieved Employees who worked a total 3,825
5 of PAGA Pay Periods as of March 10, 2025 (i.e., as of the date the Parties participated in
6 mediation).

7 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
8 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in
9 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
10 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
11 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
12 employees who need access to the Class Data to effect and perform under this Agreement.
13 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
14 Class Data omitted class member identifying information and to provide corrected or updated
15 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
16 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
17 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
18 to missing or omitted Class Data.

19 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
20 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
21 taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.
22 Defendants' payment of the Gross Settlement Amount and Defendants' share of payroll taxes is
23 contingent upon receipt of the Administrator's payment instructions. Defendants' payment
24 obligations with respect to the Gross Settlement Amount and Defendants' share of payroll taxes
25 shall be met upon initiating the electronic transfer of funds in the amounts provided for in this
26 Settlement Agreement pursuant to the Settlement Administrator's instructions. In the event of an
27 unsuccessful electronic transfer of funds, the Parties agree to cooperate in good faith to resolve the

1 issues.

2 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants
3 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
4 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
5 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
6 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
7 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
8 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
9 Payments. The Settlement Administrator shall also set aside the employer taxes and all employee-
10 side payroll taxes, contributions, and withholdings, and timely forward these to the appropriate
11 government authorities.

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 Notice Packet 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 Notice Packet 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 seven (7) days of receiving a returned check the Administrator must re-mail checks to the
27 USPS forwarding address provided or to an address ascertained through the Class Member
28

1 Address Search. The Administrator need not take further steps to deliver checks to Class Members
2 whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a
3 replacement check to any Class Member whose original check was lost or misplaced, requested
4 by the Class Member prior to the void date.

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

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

14 **5. [OMITTED]**

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

20 6.1 Plaintiff's Release. In addition to the Released Class Claims and Released PAGA
21 Claims described below, Plaintiff, individually and on behalf of his respective former and present
22 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns
23 generally, release and discharge Released Parties from all claims, transactions, or occurrences
24 demands, rights, liabilities and causes of action of every nature and description whatsoever,
25 whether known or unknown, asserted or that might have been asserted, whether in tort, contract,
26 or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or
27 in connection with any act or omission of the Released Parties through the date of full execution

1 of this Settlement Agreement(“Plaintiff’s Release.”). Plaintiff’s Release does not extend to any
2 claims or actions to enforce this Agreement, or to those rights that as a matter of law cannot be
3 waived, including but not limited to any claims for vested benefits, unemployment benefits,
4 disability benefits, social security benefits, workers’ compensation benefits that arose at any time.
5 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
6 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
7 Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or
8 additional facts or Plaintiff’s discovery of them.

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

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

17
18 6.2 Release by Participating Class Members: All Participating Class Members, on
19 behalf of themselves and their respective former and present representatives, agents, attorneys,
20 heirs, administrators, successors, and assigns, release Released Parties from all claims that were
21 alleged, or reasonably could have been alleged, based on the facts set forth in the Operative
22 Complaint that arose during the Class Period including, e.g., claims for: (a) failure to pay all
23 wages earned for all hours worked and other compensable hours at the correct rates of pay,
24 including for off-the-clock work, hours improperly deducted, minimum wages, regular wages,
25 overtime wages, and doubletime wages; (b) failure to provide compliant rest breaks or
26 compensation in lieu thereof; (c) failure to provide compliant meal periods or compensation in
27 lieu thereof; (d) failure to reimburse for necessary business-related expenses; (e) failure to provide

1 accurate and complete itemized wage statements and maintain payroll records; (f) failure to timely
2 pay all wages due during employment and upon separation of employment; and (g) claims for
3 unfair competition. (“Released Class Claims”). Except for Plaintiff’s Release by Plaintiff and as
4 set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other
5 claims, including claims for vested benefits, wrongful termination, violation of the Fair
6 Employment and Housing Act, unemployment insurance, disability, social security, workers’
7 compensation, or claims based on facts occurring outside the Class Period.

8 6.3 Release of PAGA Claims by Aggrieved Employees. All Aggrieved Employees
9 are deemed to release, on behalf of themselves and their respective former and present
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
11 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
12 alleged, based on the facts set forth in the Operative Complaint and the PAGA Notice that arose
13 during the PAGA Period including, e.g., claims for: (a) failure to pay all wages earned for all
14 hours worked and other compensable hours at the correct rates of pay, including for off-the-clock
15 work, hours improperly deducted, minimum wages, regular wages, overtime wages, and
16 doubletime wages; (b) failure to provide compliant rest breaks or compensation in lieu thereof;
17 (c) failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to
18 reimburse for necessary business-related expenses; (e) failure to provide accurate and complete
19 itemized wage statements and maintain payroll records; (f) failure to timely pay all wages due
20 during employment and upon separation of employment; and (g) claims for unfair competition.
21 (“Released PAGA Claims”). The foregoing release shall be binding on Plaintiff, the Aggrieved
22 Employees, and the State of California, and shall bar by res judicata any claim under the PAGA
23 brought by any person, including the Aggrieved Employees, on behalf of the State of California,
24 as to any claims predicated on the Released PAGA Claims. Aggrieved Employees do not release
25 claims for wages or damages unless such Aggrieved Employees are Participating Class Members.
26
27
28

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

5 7.1 Defendants’ Representations. Defendants and Defense Counsel represent that
6 they are not aware of any other pending matter or action asserting claims that will be extinguished
7 or adversely affected by the Settlement. Defendant and Defense Counsel are not aware of any
8 potential conflicts of interest with the Administrator. Defendant further represents that, based on
9 its records and available information, Spanish is the sole non-English language necessary to
10 ensure that the Class Notice provides adequate notice to Class Members.

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

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

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

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected Apex to serve as the Administrator and verified that, as a condition of appointment, Apex agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses, including without limitation, calculating the Individual Class Payments to be issued to Participating Class Members, Individual PAGA Payment to be

issued to Aggrieved Employees, sending notices and translating same to Spanish, preparing all checks and mailings, establishing a qualified settlement fund and holding the various payments from Defendants comprising the Gross Settlement Amount and employer payroll taxes. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Tax Reporting. The Administrator will be responsible for calculating the applicable taxes and withholdings, including Defendants' employer payroll taxes owed, on the Individual Class Payments, and for paying the taxes and withholdings to the applicable taxing or governmental authorities with the necessary reports, and submitting copies to Defense Counsel. The Administrator shall issue to Participating Class Members IRS Forms W-2 for the Wage Portions of the Individual Class Payments, IRS Forms 1099 for the Non-Wage Portions, and IRS Forms 1099 to Aggrieved Employees for Individual PAGA Payments, as described in this Agreement.

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

8.4 Notice to Class Members.

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

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet with Spanish translation, if applicable substantially in the forms attached to this Agreement as **Exhibits A, B, C, and D**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class

1 Member, and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate
2 these amounts. Before mailing Notice Packets, the Administrator shall update Class Member
3 addresses using the National Change of Address database.

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

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

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

24 8.5 Requests for Exclusion (Opt-Outs).

25 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
26 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
27 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an
28

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

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

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

21 8.5.4 Every Class Member who submits a valid and timely Request for
22 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
23 or have the right to object to the class action components of the Settlement. Because future PAGA
24 claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class
25 Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph
26 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

27 8.6 Challenges to Calculation of Work Weeks/PAGA Pay Periods. Each Class

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

15 8.7 Objections to Settlement.

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

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

27 8.7.3 Non-Participating Class Members have no right to object to any of the class

1 action components of the Settlement.

2 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
3 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

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

12 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
13 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. No later
14 than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the
15 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
16 and other identifying information of Class Members who have timely submitted valid Requests
17 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
18 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
19 Exclusion from Settlement submitted (whether valid or invalid).

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

1 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
2 authority to address and make final decisions consistent with the terms of this Agreement on all
3 Class Member challenges over the calculation of Work Weeks and/or Pay Periods. The
4 Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

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

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

23
24 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on a review of their
25 records to date, Defendants estimate there are 111 Class Members who collectively worked a total
26 of 17,853 Work Weeks as of March 10, 2025 (i.e., as of the date the Parties participated in
27 mediation). If the number of Class Members and/or Work Weeks as of the date the Court approves

1 the settlement exceeds the number of Class Members and/or Work Weeks by more than 10%, the
2 Gross Settlement Amount, including the Class Counsel Fees Payment, will increase
3 proportionally according to the number of additional Work Weeks or Class Members above 110%
4 of Defendants' estimates, whichever results in a higher increase in the Gross Settlement Amount.
5 In the alternative, Defendants may elect to end the Class Period and PAGA Period on an earlier
6 date at the Defendants' discretion in order to limit the covered Work Weeks and the number of
7 Class Members to no more than 110% of Defendants' estimates ("Alternate End Date").
8 Defendants and Defense Counsel shall cooperate with Class Counsel in timely providing
9 information prior to the filing of Plaintiff's Motion for Preliminary Approval regarding whether
10 the escalator clause has been triggered and, if applicable, whether Defendants are electing to
11 shorten the Class Period and PAGA Period pursuant to this paragraph.

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

21
22 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
23 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
24 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
25 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for
26 Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later
27 than three (3) days prior to filing the Motion for Final Approval. Class Counsel and Defense

Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

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

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the

1 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
2 the amount of the Net Settlement Amount.

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

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

17
18 **13. ADDITIONAL PROVISIONS.**

19 13.1 No Admission of Liability, Class Certification or Representative Manageability
20 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
21 claims. Nothing in this Agreement is intended or should be construed as an admission by
22 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
23 have any liability for any claims asserted; nor should it be intended or construed as an admission
24 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
25 certification and representative treatment is for purposes of this Settlement only. If, for any reason
26 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
27 reserve the right to contest certification of any class for any reasons, and Defendants reserve all

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

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

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

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

obligations owed to Class Members.

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

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

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

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

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

13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all

Parties or their representatives, and approved by the Court.

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

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

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

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

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

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

13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a

1 weekend or federal legal holiday, such date or deadline shall be on the first business day
2 thereafter.

3 13.17 Notice. All notices, demands or other communications between the Parties in
4 connection with this Agreement will be in writing and deemed to have been duly given as of the
5 third business day after mailing by United States mail, or the day sent by email or messenger,
6 addressed as follows:

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

14 To Defendant:
15 Alfred J. Landegger, Esq.
16 Evelyn Zarraga, Esq.
17 James M. Bacon, Esq.
18 Landegger Verano, ALC
19 15760 Ventura Blvd., Suite 1200
20 Encino, CA 91436
21 alfred@landeggeresq.com
22 evelyn@landeggeresq.com
23 james@landeggeresq.com

24 13.18 Execution in Counterparts. This Agreement may be executed in one or more
25 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
26 Agreement shall be accepted as an original. All executed counterparts and each of them will be
27 deemed to be one and the same instrument if counsel for the Parties will exchange between
28 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
the existence and contents of this Agreement.

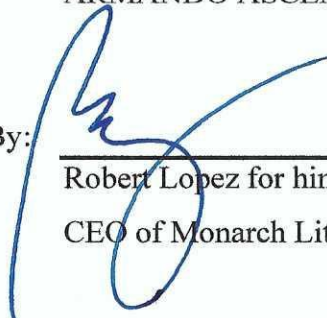
13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
date to bring a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

1 process.

2
3
4 Dated: _____, 2025

By: _____
ARMANDO ASCENCIO

5
6 Dated: July 22, 2025

By: 
Robert Lopez for himself and as
CEO of Monarch Litho Inc.

7
8
9
10 **APPROVED AS TO FORM:**

11 THE SPIVAK LAW FIRM

12
13 Dated: July 22, 2025

By: 
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, ARMANDO ASCENCIO,
and all others similarly situated

14
15
16
17
18 Dated: July 22, 2025

LANDEGGER VERANO, ALC

By: 
EVELYN ZARRAGA, Attorneys for
Defendants

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EXHIBIT A

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

(case name: *Armando Ascencio v. Monarch Litho Inc.* and number 24STCV27524)

***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 Monarch Litho Inc. and Robert Lopez (collectively “Defendants”) for alleged violations of California’s labor laws. The Action was filed by one of Defendants’ former employees Armando Ascencio (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of all persons Defendants employed in California as hourly, non-exempt employees during the Class Period of October 21, 2020 to _____ <<the date of the preliminary approval of this Settlement or the Alternate End Date>>; and (2) penalties under the California Private Attorney General Act (“PAGA”) for all persons Defendants employed in California as non-exempt, hourly employees who worked for Defendants during the PAGA Period of October 15, 2023 to _____ <<the date of the preliminary approval of this Settlement or the Alternate End Date>> (“Aggrieved Employees”).

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

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

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

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

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

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

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

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

28 **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 The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / Pay Periods Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Work Weeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Work Weeks and number of PAGA Pay Periods you worked according to Defendants' records are stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.

1 **1. WHAT IS THE ACTION ABOUT?**

2 Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating
3 California labor laws by failure to pay wages, unauthorized and unlawful wage deductions, failure
4 to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
5 business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to
6 maintain required payroll records, and related violations of the Labor Code. Based on the same
7 claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section
8 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action:
9 David Glenn Spivak and Caroline Tahmassian of The Spivak Law Firm (“Class Counsel.”)

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

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

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

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

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

2 A. Gross Settlement Amount. Defendants Will Pay \$1,600,000.00 as the Gross
3 Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement
4 into an account controlled by the Administrator of the Settlement. The Administrator will use the
5 Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class
6 Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the
7 Administrator’s expenses, and penalties to be paid to the California Labor and Workforce
8 Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will
9 fund the Gross Settlement not more than 30 days after the Judgment entered by the Court becomes

1 final. The Judgment will be final on the date the Court enters Judgment, or a later date if
2 Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

7 1. Attorney Fees and Costs. Up to \$533,333.33 (33 and 1/3% of the Gross
8 Settlement to Class Counsel for attorneys' fees and up to \$15,000.00 for their litigation expenses.
9 To date, Class Counsel have worked and incurred expenses on the Action without payment.

10 2. Class Representative Service Payment. Up to \$15,000.00 as a Class
11 Representative Service Payment for filing the Action, working with Class Counsel and
12 representing the Class. A Class Representative Service Payment will be the only monies Plaintiff
13 will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

14 3. Administration Expenses Payment. Up to \$10,000.00 to the Administrator
15 for services administering the Settlement.

16 4. PAGA Penalties. Up to \$100,000.00 for PAGA Penalties, allocated 65% to
17 the LWDA PAGA Payment and 35% in Individual PAGA Payments to the Aggrieved Employees
18 based on their PAGA Pay Periods.

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

21 Based on their records, Defendants estimated there were 111 Class Members who
22 collectively worked a total of 17,853 Work Weeks as of March 10, 2025 (i.e., as of the date the
23 Parties participated in mediation). If the number of Class Members and/or Work Weeks as of the
24 date the Court approves the settlement exceeds the estimated number of Class Members and/or
25 Work Weeks by more than 10%, the Gross Settlement Amount, including the Class Counsel Fees
26 Payment, would increase proportionally according to the number of additional Work Weeks or
27 Class Members above 110% of Defendants' estimates, whichever results in a higher increase in
28 the Gross Settlement Amount. In the alternative, Defendants had the option to elect to end the
Class Period and PAGA period on an earlier date at their discretion in order to limit the covered
Work Weeks and the number of Class Members to no more than the 110% of Defendants
estimates. According to Defendants' records, the number of additional Work Weeks or Class
Members <<did or did not>> exceed Defendants' estimates by more than 10%. Based thereon,
Defendants have elected <<an Alternate End Date of _____ or _____, the date the Court
approved the settlement>> as the Class Period and PAGA Period end date, <<which does or
which does not>> result in an increase to the Gross Settlement Amount.

C. Net Settlement Distributed to Class Members. After making the above deductions
in amounts approved by the Court, the Administrator will distribute the rest of the Gross

1 Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class
2 Members based on their Class Work Weeks.

3 D. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
4 the Court to approve an allocation of 10.00% of each Individual Class Payment to taxable wages
5 (“Wage Portion”) and the remaining 90.00% will be allocated 50% for interest and 50% for
6 penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be
7 reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes they owe on
8 the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for
9 tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage
10 Portions of the Individual Class Payments on IRS 1099 Forms.

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

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

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

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

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

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

6 H. Administrator. The Court has appointed a neutral company, Apex Class Action
7 Administration (the “Administrator”) to send this Notice, calculate and make payments, and
8 process Class Members’ Requests for Exclusion. The Administrator will also decide Class
9 Member Challenges over Work Weeks/PAGA Pay Periods, mail and re-mail settlement checks
10 and tax forms, and perform other tasks necessary to administer the Settlement. The
11 Administrator’s contact information is contained in Section 9 of this Notice.

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

20 The Participating Class Members will be bound by the release of the following “Released
21 Class Claims”:

22 All Participating Class Members, on behalf of themselves and their respective former and
23 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
24 release Released Parties from all claims that were alleged, or reasonably could have been
25 alleged, based on the facts set forth in the Operative Complaint that arose during the Class
26 Period including, e.g., claims for: (a) failure to pay all wages earned for all hours worked
27 and other compensable hours at the correct rates of pay, including for off-the-clock work,
28 hours improperly deducted, minimum wages, regular wages, overtime wages, and
doubletime wages; (b) failure to provide compliant rest breaks or compensation in lieu
thereof; (c) failure to provide compliant meal periods or compensation in lieu thereof; (d)
failure to reimburse for necessary business-related expenses; (e) failure to provide
accurate and complete itemized wage statements and maintain payroll records; (f) failure
to timely pay all wages due during employment and upon separation of employment; and
(g) claims for unfair competition. (“Released Class Claims”). Except for Plaintiff’s
Release by Plaintiff and Released PAGA Claims being released by Aggrieved Employees,
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.

29 The “Released Parties” means: Defendants and each of their former and present officers,
30 directors, owners, attorneys, insurers, employees and agents.

1 J. The PAGA Release. After the Court’s judgment is final, and Defendants have paid
2 the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved
3 Employees will be barred from asserting any of the “Released PAGA Claims” against Defendants,
4 whether or not they exclude themselves from the Settlement. This means that all Aggrieved
5 Employees, including those who are Participating Class Members and those who opt-out of the
6 Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against the
7 Release Parties based on the PAGA claims alleged in the Action and resolved by this Settlement.

8 The Aggrieved Employees will be bound by the release of the following “Released PAGA
9 Claims”:

10 All Aggrieved Employees are deemed to release, on behalf of themselves and their
11 respective former and present representatives, agents, attorneys, heirs, administrators,
12 successors, and assigns, the Released Parties from all claims for PAGA penalties that were
13 alleged, or reasonably could have been alleged, based on the facts set forth in the
14 Operative Complaint and the PAGA Notice that arose during the PAGA Period including,
15 e.g., claims for: (a) failure to pay all wages earned for all hours worked and other
16 compensable hours at the correct rates of pay, including for off-the-clock work, hours
17 improperly deducted, minimum wages, regular wages, overtime wages, and doubletime
18 wages; (b) failure to provide compliant rest breaks or compensation in lieu thereof; (c)
19 failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to
20 reimburse for necessary business-related expenses; (e) failure to provide accurate and
21 complete itemized wage statements and maintain payroll records; (f) failure to timely pay
22 all wages due during employment and upon separation of employment; and (g) claims for
23 unfair competition. (“Released PAGA Claims”). The foregoing release shall be binding
24 on Plaintiff, the Aggrieved Employees, and the State of California, and shall bar by res
25 judicata any claim under the PAGA brought by any person, including the Aggrieved
26 Employees, on behalf of the State of California, as to any claims predicated on the
27 Released PAGA Claims. Aggrieved Employees do not release claims for wages or
28 damages unless such Aggrieved Employee is a Participating Class Member.

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

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

25 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
26 Payments by (a) dividing \$35,000.00 by the total number of PAGA Pay Periods worked by all
27 Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked
28 by each individual Aggrieved Employee.

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

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

16 5. HOW WILL I GET PAID?

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

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

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

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

28 Email, fax, or mail a written and signed letter with your name, present address, telephone
number, and a simple statement that you do not want to participate in the Settlement. You may
use the enclosed Election Not To Participate In Settlement form for this purpose. The
Administrator will exclude you based on any writing communicating your request be excluded.
Be sure to personally sign your request, identify the Action as *Armando Ascencio vs. Monarch
Litho Inc.*, Case No. 24STCV27524, and include your identifying information (full name, address,
telephone number, approximate dates of employment, and social security number for verification
purposes). You must make the request yourself. If someone else makes the request for you, it
will not be valid. You should send your Request for Exclusion to the Administrator by email, fax,
or send by regular U.S. mail. **The Administrator must be sent your request to be excluded by
<<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has the

1 Administrator's contact information. If you are an Aggrieved Employee, you will still receive an
2 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 Payment. Upon
11 reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will
12 send you 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 Agreement, 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, *Armando Ascencio vs. Monarch Litho Inc.*, case no. 24STCV27524, and include your
22 name, current address, telephone number, and approximate dates of employment for Defendants
23 and sign the objection. Section 9 of this Notice has the Administrator's contact information. You
24 may use the enclosed Objection form for this purpose. You should send your objection to the
25 Administrator by 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.

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

22 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
23 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department 12 of the Los
24 Angeles Superior Court, located at Spring Street Courthouse, 312 N. Spring Street, Los Angeles,
25 CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the
26 Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and
27 the Administrator. The Court will invite comment from objectors, Class Counsel and Defense
28 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>

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

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything 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 <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. 24STCV27524. 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:	Apex 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 Unclaimed 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

1 *Ascencio v. Monarch Litho Inc.*
2 **Superior Court of the State of California, County of Los Angeles**
3 Case No. 24STCV27524

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

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

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

11 *Ascencio v. Monarch Litho Inc.* Class Action Administrator
12 c/o ____
13 ____
14 ____

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

20 (Typed or Printed Name)

21 (Address)

22 (City, State, Zip Code)

23 (Telephone Number, Including Area Code)

24 (Identification Number)

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

27 Dated: ____.
28 (Signature)

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EXHIBIT C

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

2 Superior Court of The State of California

3 For The County of Los Angeles

4 *Armando Ascencio v. Monarch Litho Inc.*, Case No. 24STCV27524

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

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

9 XX – XX –

10 The amount of your estimated Individual Class Payment is based upon the number of eligible
11 Work Weeks you worked between October 21, 2020 and _____[the date preliminary
12 approval of the settlement is entered by the court or the Alternate End Date]. “Work Week”
13 means any week during which a Class Member worked for Defendants for at least one day, during
14 the Class Period. The amount of your estimated Individual PAGA Payment is based upon the
15 number of PAGA Pay Periods you worked between October 15, 2023 and _____[the date
16 preliminary approval of the settlement is entered by the court or the Alternate End Date].
17 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for
18 Defendants for at least one day during the PAGA Period. The number of Work Weeks and PAGA
19 Pay Periods applicable to your claim are set forth below.

20 **YOUR ELIGIBLE WORK WEEKS**

21 Defendants’ records indicate that you worked <<number of Class Workweeks>> Work Weeks
22 between October 21, 2020 and _____[the date preliminary approval of the settlement is entered
23 by the court or the Alternate End Date] and <<number of PAGA Pay Periods>> PAGA Pay
24 Periods between October 15, 2023 through _____[the date preliminary approval of the settlement
25 is entered by the court or the Alternate End Date].

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

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

If you wish to dispute the number of Work Weeks and/or PAGA Pay Periods credited to you, or
anything else about your employment status, you can complete and return this form by indicating
what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE
DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail with proof of the

1 submission date (such as a postmark or delivery service date stamp). You may use this Work
2 Week/PAGA Pay Period Dispute Form for this purpose. You must also send any documents or
3 other information that you contend supports your belief that the information set forth above is
4 incorrect. You should send copies rather than originals because the documents will not be
5 returned to you. The Administrator will resolve any dispute based upon Defendants' records and
any information you provide. Please be advised that the information on this Work Week/ PAGA
Pay Period Dispute Form is presumed to be correct unless the documents you submit are
company records from Defendants.

6 _____
7 _____
8 _____

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

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EXHIBIT D

1 **OBJECTION FORM**

2 **Armando Ascencio v. Monarch Litho Inc.**
3 **Superior Court of the State California, County of Los Angeles**
4 **Case No. 24STCV27524**

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

6 CPT ID: <<CPT ID>>

7 <<Name>>

8 <<Address1>>

9 <<Address2>>

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

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (_____) _____ - _____

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

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

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

27 [] I OBJECT to the *Armando Ascencio v. Monarch Litho Inc.* Settlement on the following
28 grounds (if additional space necessary, please include additional sheets of paper):

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

Executed on _____, 2025

(Signature)

<<Name>>

(Printed Name)

EMAIL TO THE ADMINISTRATOR: << _____@_____.COM>>

FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Armando Ascencio v. Monarch Litho Inc. Administrator
[ADDRESS]

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

ARMANDO ASCENCIO, on behalf of himself
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.

MONARCH LITHO INC., a California
corporation, ROBERT LOPEZ, a natural
individual; and DOES 1–50, inclusive,

Defendant(s).

Case No. 24STCV27524

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: October 21, 2024
Dept: 12, The Honorable Carolyn
B. Kuhl

The Motion of Plaintiff Armando Ascencio (hereafter referred to as “Plaintiff”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Carolyn B. Kuhl presiding. The Court having considered the Motion, the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement. 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 hearing. The Court will make a determination at the hearing on the motion for final approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

2. For purposes of this Preliminary Approval Order, the “Settlement Class” means all persons Defendants employed in California as non-exempt, hourly employees who worked for Defendants during the Class Period (collectively “Class Members”). The “Class Period” shall mean the period of time from October 21, 2020, through [the date the Court preliminarily approves this class action settlement or the Alternate End Date].

3. Based on its records, Defendants estimates that, as of March 10, 2025, the date the Parties participated in mediation, (1) there were 111 Class Members and 17,853 total Work Weeks during the Class period and (2) there were 89 Aggrieved Employees who worked 3,825 Pay Periods during the PAGA Period. If the number of Class Members and/or Work Weeks as of the date the Court approves the settlement exceeds the estimated number of Class Members and/or Work Weeks by more than 10%, the Gross Settlement Amount, including the Class Counsel Fees Payment, would increase proportionally according to the number of additional Work Weeks or Class Members above 110% of Defendants' estimates, whichever results in a higher increase in the Gross Settlement Amount. In the alternative, Defendants had the option to elect to end the Class Period and PAGA period on an earlier date at their discretion in order to limit the covered Work Weeks and the number of Class Members to no more than the 110% of Defendants estimates. According to Defendants' records, the number of additional Work Weeks or Class Members [did or did not] exceed Defendants' estimates by more than 10%. Based thereon, Defendants have elected [an Alternate End Date of _____ or _____, the date

1 the Court approved the settlement] as the Class Period and PAGA Period end date, [which does
2 or which does not] result in an increase to the Gross Settlement Amount.

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

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

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

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

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

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

17 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law
18 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s
19 contact information is Alfred J. Landegger, Esq., Landegger Verano, ALC, 15760 Ventura Blvd.,
20 Suite 1200, Encino, CA, 91436.

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

26 12. If the Administrator, Defendants or Class Counsel is contacted by or otherwise
27 discovers any persons who believe they should have been included in the Class Data and should
28

1 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
2 telephone, and in good faith. in an effort to agree on whether to include them as Class Members.
3 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
4 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
5 requiring them to exercise options under the Settlement Agreement not later than 14 days after
6 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

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

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

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

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

16. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. However, all Aggrieved Employees, including those that are Non-Participating Class Member, will be deemed to release all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiffs pre-filing letter to the LWDA, including the Released PAGA Claims under Paragraph 6.3 of the Settlement. Aggrieved Employees do not release claims for wages or damages unless such Aggrieved Employee is a Participating Class Member.

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

18. Objections to Settlement. Only Participating Class Members may object to the

1 class action components of the Settlement and/or this Agreement, including contesting the
2 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
3 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

4 19. Participating Class Members may send written objections to the Administrator, by
5 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
6 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
7 Participating Class Member who elects to send a written objection to the Administrator must do
8 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
9 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form,
10 attached as Exhibit D to the Settlement Agreement, may be used for this purpose but is not
11 required.

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

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

24 22. The Court approves, as to form and content, the Class Notice in substantially the
25 form attached as Exhibit A to the Settlement Agreement, the Election Not to Participate in
26 Settlement form in substantially the form attached as Exhibit B to the Settlement Agreement, the
27 Work Week/PAGA Pay Period Dispute form in substantially the form attached as Exhibit C to

1 the Settlement Agreement, and the Objection form in substantially the form attached as Exhibit
2 D to the Settlement Agreement.

3 23. The Court approves, for settlement purposes only, David Glenn Spivak and
4 Caroline Tahmassian of The Spivak Law Firm.

5 24. The Court approves, for settlement purposes only, Armando Ascencio as the Class
6 Representative.

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

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

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

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

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

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

1 litigation, as more specifically set forth in the Settlement.

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

5 **IT IS SO ORDERED.**

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8 **DATE**

**THE HONORABLE CAROLYN B.
KUHL
SUPERIOR COURT JUDGE**

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EXHIBIT F

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

ARMANDO ASCENCIO, on behalf of himself
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.

MONARCH LITHO INC., a California
corporation, ROBERT LOPEZ, a natural
individual; and DOES 1–50, inclusive,

Defendant(s).

Case No. 24STCV27524

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

Action filed: October 21, 2024
Dept: 12, The Honorable Carolyn
B. Kuhl

20 This matter came on for hearing on ____ at ____ .m. in Department 12 of the above-captioned
21 court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant to California
22 Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and
23 Release of Claims (the “Settlement”) filed herewith which provides for a Gross Settlement
24 Amount (“GSA”) of up to \$1,600,000.00 in compromise of all disputed claims on behalf of all
25 persons Defendants employed in California as non-exempt, hourly employees who worked for
26 Defendants during the period of October 21, 2020 to _____ <<the date the Court preliminarily
27 approves this class action settlement or the Alternate End Date >> (“Settlement Class Period”).

1 All capitalized terms used herein shall have the same meaning as defined in the Settlement.

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

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

20 2. For purposes of this Final Order and Judgment, the Class Members are all persons
21 Defendants employed in California as non-exempt, hourly employees who worked for Defendants
22 during the period of October 21, 2020 to _____ <<the date the Court preliminarily approves
23 this class action settlement or the Alternate End Date >> ("Settlement Class Period").

24 3. The Court finds and determines that the notice procedure afforded adequate
25 protections to Class Members and provides the basis for the Court to make an informed decision

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

1 regarding final approval of the Settlement based on the responses of Class Members. The Court
2 finds and determines that the notice provided in this case was the best notice practicable, which
3 satisfied the requirements of law and due process as to all persons entitled to such notice.

4 **Release of Claims.** The Parties agree that it is their intent that the resolution set forth in
5 this Settlement will release and discharge the Released Claims by way of any further attempt, by
6 lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each
7 and all of the Settlement Class Members (including participation to any extent in any
8 representative or collective action) against the Released Parties. This release will not take effect
9 until Defendants have paid the Gross Settlement Amount in full per the Settlement Agreement.

10 **Released Class Claims.** The Participating Class Members will be bound by the release of
11 the following “Released Class Claims”:

12 All Participating Class Members, on behalf of themselves and their respective former and
13 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
14 release Released Parties from all claims that were alleged, or reasonably could have been
15 alleged, based on the facts set forth in the Operative Complaint that arose during the Class
16 Period including, e.g., claims for: (a) failure to pay all wages earned for all hours worked
17 and other compensable hours at the correct rates of pay, including for off-the-clock work,
18 hours improperly deducted, minimum wages, regular wages, overtime wages, and
19 doubletime wages; (b) failure to provide compliant rest breaks or compensation in lieu
20 thereof; (c) failure to provide compliant meal periods or compensation in lieu thereof; (d)
21 failure to reimburse for necessary business-related expenses; (e) failure to provide
22 accurate and complete itemized wage statements and maintain payroll records; (f) failure
23 to timely pay all wages due during employment and upon separation of employment; and
24 (g) claims for unfair competition. Except for Plaintiff’s Release by Plaintiff and Released
25 PAGA Claims being released by Aggrieved Employees, Participating Class Members do
26 not release any other claims, including claims for vested benefits, wrongful termination,
27 violation of the Fair Employment and Housing Act, unemployment insurance, disability,

1 social security, workers' compensation, or claims based on facts occurring outside the
2 Class Period.

3 **Released PAGA Claims:** The Aggrieved Employees will be bound by the release of the
4 following "Released PAGA Claims":

5 All Aggrieved Employees are deemed to release, on behalf of themselves and their
6 respective former and present representatives, agents, attorneys, heirs, administrators,
7 successors, and assigns, the Released Parties from all claims for PAGA penalties that were
8 alleged, or reasonably could have been alleged, based on the facts set forth in the Operative
9 Complaint and the PAGA Notice that arose during the PAGA Period including, e.g.,
10 claims for: (a) failure to pay all wages earned for all hours worked and other compensable
11 hours at the correct rates of pay, including for off-the-clock work, hours improperly
12 deducted, minimum wages, regular wages, overtime wages, and doubletime wages; (b)
13 failure to provide compliant rest breaks or compensation in lieu thereof; (c) failure to
14 provide compliant meal periods or compensation in lieu thereof; (d) failure to reimburse
15 for necessary business-related expenses; (e) failure to provide accurate and complete
16 itemized wage statements and maintain payroll records; (f) failure to timely pay all wages
17 due during employment and upon separation of employment; and (g) claims for unfair
18 competition. The foregoing release shall be binding on Plaintiff, the Aggrieved
19 Employees, and the State of California, and shall bar by res judicata any claim under the
20 PAGA brought by any person, including the Aggrieved Employees, on behalf of the State
21 of California, as to any claims predicated on the Released PAGA Claims. Aggrieved
22 Employees do not release claims for wages or damages unless such Aggrieved Employee
23 is a Participating Class Member.

24 **"Released Parties"** shall mean Defendants and each of their former and present officers,
25 directors, owners, attorneys, insurers, employees and agents.

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

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

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

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

19 a. Class Counsel fees & costs of \$533,333.33 in attorneys’ fees and
20 \$15,000.00 in litigation costs to Class Counsel;

21 b. \$15,000.00 as a Class Representative Service Payment award payable to
22 Plaintiff Armando Ascencio for his service as a Class Representative;

23 c. \$10,000.00 in costs of the Administrator payable to Apex Class Action
24 Administration for its services as the Administrator; and

25 d. Payment of \$65,000.00 (65% of the (\$100,000.00 PAGA penalty) to the
26 LWDA.

27 7. The settlement shall proceed as directed in the Settlement, and no payments

1 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without
2 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
3 of all matters relating to the interpretation, administration, implementation, effectuation and
4 enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of
5 Court 3.769(h).

6 8. Within 30 calendar days of the Effective Date of Settlement, Defendants shall
7 deposit the Settlement proceeds in an account designated by the Administrator comprising of: (i)
8 the total amount of all Individual Class Payments to Participating Class Members, (ii) the Court
9 approved Class Counsel fees & costs, (iii) the Court-approved Class Representative Service
10 Payment, (iv) the Court-approved costs of the Administrator, (v) the payment to the LWDA, and
11 (vi) the total amount of all Individual PAGA Payments to Aggrieved Employees.

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

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

22 11. The Parties shall file a final accounting report by _____. A non-appearance case
23 review re submission of a final report is scheduled for _____ at _____.m. in Department 12.

24 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
25 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
26 deposit funds for distribution by the Administrator to Participating Class Members in accordance
27 with the Settlement.

13. 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.

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

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

16. 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 Defendant, 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.

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE _____

THE HONORABLE CAROLYN B.

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KUHL
SUPERIOR COURT JUDGE

El presente Acuerdo de Conciliación de la Acción de Grupo y PAGA (“Acuerdo”) se suscribe por y entre el Demandante Armando Ascencio (“Demandante”), en su nombre y en nombre del “Grupo” según se define en el presente documento, por un lado, y los demandados Monarch Litho Inc. y Robert Lopez (colectivamente “Demandados” o “Monarch”), por otro lado. El Acuerdo se refiere al Demandante y a los Demandados colectivamente como “Partes”, o individualmente como “Parte”.

1. DEFINICIONES.

1.1. “Acción” se refiere a la demanda presentada por el demandante en la que alega violaciones de salarios y horas contra Monarch Litho Inc. titulada “Armando Ascencio, en nombre propio en nombre de todos los demás en situaciones similares, y del público en general, y como ‘Empleado Agraviado’ en nombre de otros ‘Empleados Agraviados’ según la Ley de Abogados Generales Privados del Código Laboral de 2004, *Demandante(s)*, contra Monarch Litho Inc., una corporación de California, Robert Lopez, una persona física; y DOES 1 a 50, ambos inclusive, *Demandado(s)*,” Número de Caso 24STCV27524 iniciado el 21 de octubre de 2024 y pendiente en el Tribunal Superior del Estado de California, Condado de Los Angeles.

1.2. “Administrador” se refiere a la Administración de la Acción de Grupo de Apex (“Apex”), 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 reembolsarle los honorarios y gastos razonables en que haya incurrido, de conformidad con la decisión del Administrador de “no exceder” la oferta presentada ante el Tribunal en relación con la Aprobación Preliminar del Acuerdo.

1.4. “Empleado Agraviado” se refiere a una persona empleada por Demandados en California y clasificada como empleado por hora no exento que trabajó para los Demandados durante el Período PAGA.

1.5. “Grupo” se refiere a todas las personas por los Demandados en California como empleados por hora no exentos que trabajaron para los Demandados durante el Período del Grupo.

1.6. “Abogado del grupo” se refiere a David Glenn Spivak y Caroline Tahmassian del bufete de abogados The Spivak Law Firm.

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

1.8. “Datos del Grupo” se refiere a la información de identificación del Miembro del Grupo que los Demandados tienen en su poder, incluyendo el nombre del Miembro del Grupo, la última dirección postal conocida, el número de Seguro Social y el número de semanas de trabajo del Grupo y los períodos de pago de PAGA.

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

1.10. “Búsqueda de direcciones de los Miembros del Grupo” se refiere a la investigación y búsqueda por parte del Administrador de las direcciones postales actuales de los Miembros del Grupo utilizando todas las fuentes, métodos y medios razonablemente disponibles, incluidos, entre otros, la base de datos Nacional de Cambios de Dirección, la localización de personas y el contacto directo del Administrador con los Miembros del Grupo.

1.11. “Notificación del Grupo” se refiere a la NOTIFICACIÓN APROBADA POR EL TRIBUNAL SOBRE EL ACUERDO DE ACCIÓN DE GRUPO Y LA FECHA DE AUDIENCIA PARA LA APROBACIÓN FINAL DEL TRIBUNAL, que se enviará por correo a los Miembros del Grupo en inglés con una traducción al español usando el formato oficial, sin variación material, adjunta como Anexo A y se incorpora como referencia en el presente Acuerdo.

1.12. “Período del Grupo” se refiere el período desde 21 de octubre de 2020 a la fecha en que el Tribunal apruebe de forma preliminar este acuerdo de acción de grupo, o la Fecha de finalización alternativa (según se define en el Párrafo 9 a continuación), lo que ocurra primero.

1.13. “Representante del Grupo” se refiere a Armando Ascencio, el Demandante nombrado en la denuncia operativa de la Acción que solicita la aprobación del Tribunal para actuar como Representante del Grupo.

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

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

1.16. “Demandados” se refiere a los demandados nombrados Monarch Litho Inc. y Robert Lopez.

1.17. “Abogado de la Defensa” se refiere a Alfred J. Landegger, Evelyn Zarraga y James

1 M. Bacon de Landegger Verano, ALC.

2 1.18. “Fecha de Entrada en Vigor” se refiere a la fecha en que hayan ocurrido las dos
3 circunstancias siguientes: (a) el Tribunal dicte Sentencia sobre su Orden de Aprobación Final del
4 Acuerdo; y (b) la Sentencia sea definitiva. La Sentencia será definitiva en la fecha en que ocurra
5 la primera de las siguientes circunstancias: (a) si ningún Miembro del Grupo Participante se opone
6 al Acuerdo, el día en que el Tribunal dicte la Sentencia; (b) si uno o más Miembros del Grupo
7 Participantes se oponen al Acuerdo, el día siguiente a la fecha límite para presentar un aviso de
8 apelación contra la Sentencia; o (c) si se presenta una apelación dentro del plazo establecido de
9 la Sentencia, el día siguiente a la confirmación de la Sentencia por parte del Tribunal de
10 apelaciones y emita un *remittitur*.

11 1.19. “Aprobación Final” se refiere a la orden del Tribunal que otorga la aprobación
12 final del Acuerdo.

13 1.20. “Audiencia de Aprobación Final” se refiere a la audiencia del Tribunal sobre la
14 Moción de Aprobación Final del Acuerdo.

15 1.21. “Sentencia Definitiva” se refiere a la Sentencia dictada por el Tribunal al otorgar
16 la Aprobación Final del Acuerdo. Se adjunta como Anexo F un modelo de propuesta de Sentencia
17 Definitiva.

18 1.22. “Monto Bruto del Acuerdo” se refiere a \$1,600,000.00, que es el monto total que
19 los Demandados aceptan pagar de conformidad con el Acuerdo, excepto lo dispuesto en el Párrafo
20 9 más adelante, y sin incluir los impuestos sobre la nómina del empleador adeudados sobre las
21 Porciones Salariales de los Pagos Individuales del Grupo. El Monto Bruto del Acuerdo se utilizará
22 para pagar los Pagos Individuales del Grupo, los Pagos Individuales de PAGA, el Pago de PAGA
23 a la LWDA, los Honorarios del Abogado del Grupo, los Gastos del Abogado del Grupo, el Pago
24 por los Servicios del Representante del Grupo y el Pago de los Gastos de Administración.

25 1.23. “Pago Individual del Grupo” se refiere a la parte prorrateada que le corresponder
26 al Miembro del Grupo Participante del Monto Neto del Acuerdo calculado en función del número
27 de semanas laborales trabajadas durante el Período del Grupo.

28 1.24. “Pago Individual de PAGA” se refiere a la parte prorrateada del 35% de las
sanciones de PAGA que corresponde al empleado agraviado, calculadas según el número de
períodos de pago trabajados durante el Período de PAGA.

1.25. “Sentencia” se refiere a la sentencia dictada por el Tribunal con base en la
Aprobación Final.

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

1.27. “Pago de PAGA a la LWDA” se refiere al 65% de las sanciones 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 de PAGA, Pago de PAGA a la LWDA, Pago por los Servicios del Representante del Grupo, Pago de los Honorarios del Abogado del Grupo, Pago de Gastos de Litigio del Abogado del Grupo y Pago de los Gastos de Administración. El resto se pagará a los Miembros del Grupo Participantes como pagos individuales del grupo.

1.29. “Miembro del Grupo No Participante” se refiere cualquier Miembro del Grupo que opte por no participar en el Acuerdo enviando al Administrador una Solicitud de exclusión válida y dentro del plazo establecido.

1.30. “Paquete de Notificación” se refiere a la Notificación del Grupo (Anexo A), el formulario de Elección de No Participar en el Acuerdo (Anexo B), el Formulario de Disputa de Semana Laboral del Grupo y el Período de Pago de PAGA (Anexo C) y el formulario de Objeción (Anexo D) en inglés con traducción al español.

1.31. “Período de Pago de PAGA” se refiere a cualquier Período de Pago durante el cual un Empleado Agraviado haya trabajado para los Demandados por lo menos un día durante el Período de PAGA.

1.32. “Período de PAGA” se refiere al período desde el 15 de octubre de 2023 a la fecha en que el Tribunal apruebe preliminarmente este acuerdo de acción de grupo, o la Fecha de finalización alternativa (según se define en el Párrafo 9 a continuación), lo que ocurra primero.

1.33. “PAGA” se refiere a la Ley de Abogados Generales Privados (Código Laboral §§ 2698 *et seq.*).

1.34. “Notificación de PAGA” se refiere a la carta del Demandante del 15 de octubre de 2024 dirigida a los Demandados y a la LWDA proporcionando notificación de conformidad con la sección 2699.3, inciso (a) del Código Laboral.

1.35. “Sanciones de PAGA” se refiere al monto total de las sanciones civiles PAGA (\$100,000.00) que se pagarán con cargo al Monto Bruto del Acuerdo, asignándose el 35% a los Empleados Agraviados (\$35,000.00) y el 65% a la LWDA (\$65,000.00) en concepto de liquidación de las reclamaciones de PAGA.

1.36. “Miembro del Grupo Participante” se refiere a un Miembro del Grupo que no presenta una solicitud válida y oportuna de exclusión del acuerdo.

1 1.37. “Demandante” se refiere a Armando Ascencio, el demandante nombrado en la
2 Acción.

3 1.38. “Aprobación Preliminar” se refiere a la Orden del Tribunal que otorga la
4 aprobación preliminar del Acuerdo.

5 1.39. “Orden de Aprobación Preliminar” se refiere a la Orden propuesta que otorga la
6 Aprobación Preliminar y la Aprobación del Acuerdo PAGA. Se adjunta como Anexo E un modelo
de Orden de Aprobación Preliminar propuesta.

7 1.40. “Reclamaciones del Grupo Exoneradas” se refiere a las reclamaciones que se
8 exoneran según se describe en el Párrafo 6.2 a continuación.

9 1.41. “Reclamaciones de PAGA Exoneradas” se refiere a las reclamaciones que se
exoneran según se describe en el Párrafo 6.3 a continuación.

10 1.42. “Partes Exoneradas” se refiere a: los Demandados y cada uno de sus anteriores y
11 actuales funcionarios, directores, propietarios, abogados, aseguradoras, empleados y agentes.

12 1.43. “Solicitud de Exclusión” se refiere a la presentación por parte de un Miembro del
13 Grupo de una solicitud por escrito para ser excluido del acuerdo del grupo, firmada por el
14 Miembro del Grupo. Se adjunta como Anexo B un formulario de Elección de No Participar en el
Acuerdo.

15 1.44. “Plazo de Respuesta” se refiere a los 60 días después de que el Administrador
16 envíe por correo la Notificación a los Miembros del Grupo y a los Empleados Agraviados, y será
17 la última fecha en la que los Miembros del Grupo podrán: (a) enviar por fax, correo electrónico o
18 correo postal las Solicitudes de Exclusión del Acuerdo, o (b) enviar por fax, correo electrónico o
19 correo postal sus Objeciones al Acuerdo. Los Miembros del Grupo a quienes se les reenvíen
20 Paquetes de Notificación luego de haber sido devueltos al Administrador por no haberse podido
21 entregar tendrán 14 días del calendario adicionales una vez que haya vencido el Plazo de
Respuesta.

22 1.45. “Acuerdo” se refiere a la resolución de la Acción efectuada por el presente
23 Acuerdo y la Sentencia.

24 1.46. “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.

25 1.47. Se adjunta como Anexo C el formulario de disputa sobre la Semana Laboral del
26 Grupo y el Período de Pago de PAGA.

1 **2. CONSIDERANDOS.**

2 2.1. El 21 de octubre de 2024, el Demandante inició esta acción presentando una
3 denuncia alegando causas de acción contra los Demandados por no pagar salarios, realizar
4 deducciones salariales no autorizadas e ilegales, por no proporcionar períodos de comida, por no
5 autorizar ni permitir períodos de descanso, por no indemnizar los gastos laborales, por no emitir
6 comprobantes de salario adecuados, por no pagar salarios a tiempo, por no mantener los registros
7 de nómina requeridos y reclamaciones relacionadas. El 19 de diciembre de 2024, el Demandante
8 presentó una primera denuncia enmendada agregando reclamaciones de conformidad con la Ley
9 de Abogados Generales Privados. La Primera Denuncia Enmendada es la denuncia operativa en
10 la Acción (la “Denuncia Operativa”). Los Demandados niegan las alegaciones de la Denuncia
11 Operativa, niegan cualquier incumplimiento de las leyes identificadas en la Denuncia Operativa
y niegan toda responsabilidad por las causas de acción alegadas.

12 2.2. De conformidad con la sección 2699.3, inciso (a) del Código Laboral, el
13 Demandante notificó por escrito y a tiempo a los Demandados y a la LWDA mediante el envío
14 de la Notificación de PAGA.

15 2.3. El 10 de marzo de 2025, las Partes participaron en una mediación que duró todo
16 el día y estuvo presidida por Joseph M. Lovretovich, lo que dio lugar a este Acuerdo para resolver
17 la Acción.

18 2.4. Antes de la mediación, el demandante obtuvo, a través de una exhibición de
19 pruebas informal, el número de empleados comparables, el número de semanas laborales, el
20 número de períodos de pago, las tarifas promedio de pago, registros de tiempo de muestra,
21 registros de nómina de muestra, políticas escritas e información relacionada. La investigación del
22 Demandante fue suficiente para satisfacer los criterios de aprobación del tribunal establecidos en
23 *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*”).

24 2.5. El Tribunal no ha concedido la certificación del grupo.

25 2.6. Las Partes, el Abogado del Grupo y el Abogado de la Defensa declaran que no
26 tienen conocimiento de ningún otro asunto o acción pendiente que plantee reclamaciones que se
27 extinguirán o se verán afectadas por el Acuerdo.

1 **3. TÉRMINOS MONETARIOS.**

2 3.1. Monto Bruto del Acuerdo. Salvo que se disponga lo contrario en el párrafo 9 a
3 continuación, los Demandados se comprometen a pagar \$1,600,000.00 y nada más, como el
4 Monto Bruto del Acuerdo y pagar por separado la porción de los Demandados de los impuestos
5 sobre la nómina del empleador adeudados sobre las Porciones Salariales de los Pagos Individuales
6 del Grupo. Los Demandados no tienen obligación de pagar ninguna porción del Monto Bruto del
7 Acuerdo (ni ningún impuesto sobre la nómina) antes de la fecha límite establecida en el Párrafo
8 4.3 de este Acuerdo. El Administrador desembolsará la totalidad del Monto Bruto del Acuerdo
9 sin solicitar ni exigir a los Miembros del Grupo Participantes o a los Empleados Agraviados que
10 presenten ninguna reclamación como condición de pago. No obstante, la devolución de los fondos
11 en caso de que el Tribunal se niegue a conceder la Aprobación Preliminar y/o la Aprobación Final
12 del Acuerdo, ninguna parte del Monto Bruto del Acuerdo no se devolverá a los Demandados.

13 3.2. Pagos del Monto Bruto del Acuerdo. El Administrador efectuará y deducirá los
14 siguientes pagos con cargo al Monto Bruto del Acuerdo, en los montos especificados por el
15 Tribunal en la Aprobación Final:

16 3.2.1. Al Demandante: Pago por los servicios del Representante del Grupo al
17 Representante del Grupo de no más de \$15,000.00 (además de cualquier Pago Individual del
18 Grupo y cualquier Pago Individual de PAGA al que el Representante del Grupo tenga derecho a
19 recibir como Miembro del Grupo Participante). Los Demandados no se opondrán a la solicitud
20 del Demandante de un Pago por los Servicios del Representante del Grupo que no exceda este
21 monto. Como parte de la moción para el Pago de Honorarios del Abogado del Grupo y el Pago
22 de los Gastos de Litigio del Grupo, el Demandante solicitará la aprobación del Tribunal para
23 cualquier Pago por los Servicios del Representantes del Grupo a más tardar 16 días hábiles antes
24 de la Audiencia de Aprobación Final. Si el Tribunal aprueba un Pago por los Servicios del
25 Representante del Grupo menor al monto solicitado, el Administrador retendrá el resto en el
26 Monto Neto del Acuerdo. El Administrador pagará el Pago por los Servicios del Representante
27 del Grupo utilizando el Formulario 1099 del IRS. El Demandante asume plena responsabilidad y
28 obligación por los impuestos adeudados por el empleado con respecto al Pago por los Servicios
del Representante del Grupo.

3.2.2. Al Abogado del Grupo: Un pago de honorarios al Abogado del Grupo de
no más del 33 y 1/3%, que actualmente se estima que será \$533,333.33 y un Pago de Gastos de
Litigio al Abogado del Grupo por no más de \$15,000.00. Los Demandados no se opondrán a las

solicitudes de estos pagos siempre que no excedan dichos montos. El Demandante y/o el Abogado del Grupo presentarán una moción para el pago de los honorarios del Abogado del Grupo y el pago de los Gastos del litigio del grupo a más tardar 16 días hábiles antes de la Audiencia de la Aprobación Final. Si el Tribunal aprueba un Pago de Honorarios del Abogado del Grupo y/o un Pago de Gastos de Litigio del Abogado del Grupo menor 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 ni ante ningún otro Abogado del Demandante que surja de cualquier reclamación sobre cualquier porción de cualquier Pago de Honorarios del Abogado del Grupo y/o Pago de Gastos de Litigio del Abogado del Grupo. El Administrador pagará los honorarios del Abogado del Grupo y los gastos del Abogado del Grupo utilizando uno o más formularios 1099 del IRS. El Abogado del Grupo asume plena responsabilidad y obligación por los impuestos adeudados sobre el Pago de Honorarios del Abogado del Grupo y el Pago de Gastos de Litigio del Abogado del Grupo y exime a los Demandados de toda responsabilidad, e indemniza al Demandado, por cualquier disputa o controversia con respecto a cualquier división o distribución de cualquiera de estos Pagos.

3.2.3. Al Administrador: Un Pago de Gastos del Administrador que no exceda el monto de los \$10,000.00 excepto que se demuestre una buena causa y sea aprobado por el Tribunal. En la medida en que los gastos de administración sean menores o el Tribunal apruebe un pago menor a \$10,000.00, 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 por 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 Participante se asignará a la liquidación de 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% restante del Pago Individual del Grupo de cada Miembro del Grupo Participante se asignará a la liquidación de las reclamaciones proporcionalmente con un 50% para intereses y un 50% para sanciones (la “Porción No Salarial”). Las porciones no salariales no están sujetas a retenciones

1 salariales y se declararán en los formularios 1099 del IRS. Los Miembros del Grupo Participantes
2 asumen toda la responsabilidad y obligación por cualquier impuesto de empleado adeudado en su
3 Pago Individual del Grupo. Sin perjuicio del tratamiento de los pagos a cada Miembro del Grupo
4 Participante, ninguno de los pagos previstos en este Acuerdo, incluyendo las Porciones Salariales
5 de los Pagos Individuales del Grupo, deben considerarse como ingresos, salario, remuneración o
6 compensación a los efectos de cualquier beneficio o plan de jubilación aplicable, ni ningún pago
7 en virtud de este Acuerdo ampliará o modificará período de empleo de los Miembros del Grupo
o los Empleados Agraviados para ningún propósito.

8 3.2.4.2. Efecto de los miembros del grupo no participantes en el
9 cálculo de pagos individuales del grupo. Los Miembros del Grupo No Participantes no recibirán
10 ningún pago individual del grupo. El Administrador retendrá montos iguales a sus Pagos
11 Individuales del Grupo en el Monto Neto del Acuerdo para distribuirlos entre los Miembros del
12 Grupo Participantes de manera prorrateada.

13 3.2.5. A la LWDA y a los empleados agraviados: Las sanciones de PAGA
14 por un monto de \$100,000.00 se pagará con cargo al Monto Bruto del Acuerdo, con un 65%
15 (\$65,000.00) asignado al Pago de PAGA a la LWDA y un 35% (\$35,000.00) asignado a los Pagos
16 Individuales de PAGA.

17 3.2.5.1. El Administrador calculará cada Pago Individual de PAGA (a)
18 dividiendo el monto del 35% de las Sanciones de PAGA que corresponde a los Empleados
19 Agraviados \$35,000.00, entre el número total de Períodos de Pago PAGA trabajados por todos
20 los Empleados Agraviados durante el Período de PAGA y (b) multiplicando el resultado por los
21 Períodos de Pago PAGA de cada Empleado Agraviado. Los Empleados Agraviados asumen toda
22 la responsabilidad y obligación por cualquier impuesto adeudado sobre su Pago Individual de
23 PAGA.

24 3.2.5.2. Si el Tribunal aprueba Sanciones de PAGA menores al monto
25 solicitado, el Administrador asignará el resto al Monto Neto del Acuerdo. El 100% de las
26 Sanciones de PAGA se asignan como sanciones y no como salarios. El Administrador declarará
27 de los Pagos Individuales de PAGA en los Formularios 1099 del IRS.

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

2 4.1. Semanas Laborales del Grupo y los Períodos de Pago PAGA de los Empleados
3 Agraviados. Con base en una revisión de sus registros hasta la fecha, los Demandados estiman
4 que existen 111 Miembros del Grupo que trabajaron colectivamente un total de 17,853 semanas
5 laborales y 89 Empleados Agraviados que trabajaron un total de 3,825 períodos de pago de PAGA
al 10 de marzo de 2025 (es decir, a la fecha en que las Partes participaron en la mediación).

6 4.2. Datos del Grupo. A más tardar 15 días después de que el Tribunal otorgue la
7 Aprobación Preliminar del Acuerdo, los Demandados entregarán simultáneamente los Datos del
8 Grupo al Administrador, en forma de una hoja de cálculo de Microsoft Excel. Para proteger los
9 derechos de privacidad de los Miembros del Grupo, el Administrador debe mantener la
10 confidencialidad de los Datos del Grupo, utilizar los Datos del Grupo únicamente para los fines
del presente Acuerdo y para ningún otro propósito, y restringir el acceso a los Datos del Grupo a
11 los empleados del Administrador que necesiten acceder a los Datos del Grupo para efectuar y
12 cumplir el presente Acuerdo. Los Demandados tienen la obligación continua de notificar
13 inmediatamente al Abogado del Grupo si descubren que los Datos del Grupo no incluyen
14 información de identificación de los Miembros del Grupo y de proporcionar datos del Grupo
15 corregidos o actualizados tan pronto como sea razonablemente posible. Sin ninguna extensión del
16 plazo en el que los Demandados deben enviar los Datos del Grupo al Administrador, las Partes y
sus abogados harán de forma expedita todo lo posible, de buena fe, para reconstruir o resolver
17 cualquier problema relacionado con los Datos del Grupo que falten u hayan sido omitidos.

18 4.3. Financiación del monto bruto del acuerdo. Los Demandados deberán financiar
19 en su totalidad el monto bruto del acuerdo y también financiar los montos necesarios para pagar
20 en su totalidad la parte que les corresponde de los impuestos sobre la nómina, mediante la
transferencia de los fondos al Administrador en un plazo máximo de 30 días a partir de la fecha
21 de entrada en vigor. El pago por parte de los Demandados del Monto Bruto del Acuerdo y de su
22 parte correspondiente a los impuestos sobre la nómina depende de la recepción de las
23 instrucciones de pago del Administrador. Las obligaciones de pago de los Demandados con
24 respecto al Monto Bruto del Acuerdo y la parte correspondiente a los impuestos sobre la nómina
de los Demandados se cumplirán al iniciar la transferencia electrónica de fondos en los montos
25 previstos en el presente Acuerdo de Conciliación, de conformidad con las instrucciones del
26 Administrador del Acuerdo. En caso de que la transferencia electrónica de fondos no se realice
27 correctamente, las Partes acuerdan cooperar de buena fe para resolver los problemas.

1 4.4. Pagos del monto bruto del acuerdo. En un plazo de 14 días después de que los
2 Demandados financien el Monto Bruto del Acuerdo, el Administrador enviará por correo los
3 cheques correspondientes a todos los Pagos Individuales del Grupo, todos los Pagos Individuales
4 de PAGA, el Pago de PAGA a la LWDA, el Pago de Gastos de Administración, el Pago de
5 Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y el
6 Pago por los Servicios del Representante del Grupo. El pago de los Honorarios del Abogado del
7 Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y el Pago por los Servicios del
8 Representante del Grupo se pagarán precederá después de los Pagos Individuales del Grupo y los
9 Pagos Individuales de PAGA. El Administrador del Acuerdo también deberá reservar los
10 impuestos del empleador y todos los impuestos, contribuciones y retenciones sobre la nómina de
11 los empleados, y los enviará oportunamente a las autoridades gubernamentales correspondientes.

12 4.4.1. El Administrador emitirá los cheques de los Pagos Individuales del Grupo
13 y/o los Pagos Individuales de PAGA y los enviará a los Miembros del Grupo por Correo Postal
14 de Primera Clase de EE. UU., con franqueo prepago. En el anverso de cada cheque se indicará de
15 forma destacada la fecha (no menos de 180 días después de la fecha de envío) en la que el cheque
16 será anulado. El Administrador cancelará todos los cheques que no se hayan cobrado antes de la
17 fecha de anulación. El Administrador enviará los cheques de los Pagos Individuales del Acuerdo
18 a todos los Miembros del Grupo Participantes (incluyendo a los miembros cuyo Paquete de
19 Notificación haya sido devuelto por no haberse podido entregar). El Administrador enviará los
20 cheques de los Pagos Individuales de PAGA a todos los Empleados Agraviados, incluidos los
21 Miembros del Grupo No Participantes que reúnan los requisitos para ser considerados como
22 Empleados Agraviados (incluyendo a los miembros cuyo Paquete de Notificación haya sido
23 devuelto por no haberse podido entregar). El Administrador puede enviar a los Miembros del
24 Grupo Participante un solo cheque que combine el Pago Individual del Grupo y el Pago Individual
25 de PAGA. Antes de enviar cualquier cheque, el Administrador debe actualizar las direcciones
26 postales de los destinatarios utilizando la Base de Datos Nacional de Cambio de Dirección.

27 4.4.2. El Administrador debe realizar una Búsqueda de Dirección de los
28 Miembros del Grupo para todos los demás Miembros del Grupo cuyos cheques sean devueltos
sin entregar sin una dirección de reenvío de USPS. En un plazo de siete (7) días de recibir un
cheque devuelto, el Administrador deberá volver a enviar los cheques por correo a la dirección
de reenvío de USPS proporcionada o a una dirección determinada a través de la Búsqueda de
Direcciones de los Miembros del Grupo. El Administrador no necesitará tomar medidas

1 adicionales para entregar los cheques a los Miembros del Grupo cuyos cheques reenviados sean
2 devueltos como no entregados. El Administrador enviará de inmediato un cheque de reemplazo a
3 cualquier Miembro del Grupo cuyo cheque original se haya perdido o se haya extraviado, si así
4 lo solicita el Miembro del Grupo antes de la fecha de anulación.

5 4.4.3. Para los Miembros del Grupo cuyo cheque de Pago Individual del Grupo
6 o cheque de Pago Individual de PAGA no se haya cobrado y se haya cancelado después de la
7 fecha de anulación, el Administrador transmitirá los fondos representados por dichos cheques al
8 Fondo de Propiedad No Reclamada del Contralor de California a nombre del Miembro del Grupo,
9 sin dejar así ningún “saldo sin pagar”, sujeto a los requisitos de la Sección 384, inciso (b) del
Código de Procedimiento Civil de California.

10 4.4.4. El pago de los Pagos Individuales del Grupo y los Pagos Individuales de
11 PAGA no obligará a los Demandados a otorgar beneficios adicionales ni a realizar pagos
12 adicionales a los Miembros del Grupo (como contribuciones 401(k) o bonificaciones) más allá de
los que se especifican en este Acuerdo.

13 5. [OMITIDO]

14 6. **EXONERACIÓN DE RECLAMACIONES.** A partir de la fecha en que los Demandados
15 financien en su totalidad el Monto Bruto del Acuerdo y financien todos los impuestos sobre la
16 nómina de empleador adeudados sobre la Porción Salarial de los Pagos Individuales del Grupo,
17 el Demandante, los Miembros del Grupo y el Abogado del Grupo exonerarán las reclamaciones
18 contra todas las Partes Exoneradas de la siguiente manera:

19 6.1 Exoneración del Demandante. Además de las Reclamaciones del Grupo
20 Exoneradas y las Reclamaciones de PAGA Exoneradas que se describen a continuación, el
21 Demandante, en nombre propio y en nombre de sus respectivos cónyuges anteriores y actuales,
22 representantes, agentes, abogados, herederos, administradores, sucesores y cesionarios, en
23 general, exonera y libera a las Partes Exoneradas de todas las reclamaciones, transacciones o
24 sucesos, demandas, derechos, responsabilidades y causas de acción de toda naturaleza y
25 descripción, ya sean conocidos o desconocidos, afirmados o que pudieran haberse afirmado, ya
26 sea por agravio, por contrato o por violación de cualquier estatuto, norma, ley o reglamento estatal
27 o federal que surja de, que se relacione con o esté en conexión con cualquier acto u omisión de
28 las Partes Exoneradas hasta la fecha de la firma efectiva del presente Acuerdo de Conciliación
29 (“Exoneración del Demandante”). La Exoneración del Demandante no se extiende a ninguna

1 reclamación o acción para hacer cumplir este Acuerdo, ni a aquellos derechos a los que, por ley,
2 no se pueden renunciar, incluyendo, entre otros, cualquier reclamación por beneficios adquiridos,
3 beneficios por desempleo, beneficios por discapacidad, beneficios del seguro social y beneficios
4 de compensación laboral que hayan surgido en cualquier momento. El Demandante reconoce que
5 puede descubrir hechos o leyes diferentes o adicionales a los hechos o leyes que ahora conoce o
6 cree que son verdaderos en la actualidad, pero acepta, no obstante, que la Exoneración del
7 Demandante será y seguirá siendo efectiva en todos los aspectos, a pesar de dichos hechos
diferentes o adicionales o del hallazgo de los mismos por parte del Demandante.

8 6.1.1 Renuncia del demandante a sus derechos de conformidad con la sección
9 1542 del Código Civil de California. A los efectos de la exoneración del Demandante, el
10 Demandante renuncia y cede expresamente las disposiciones, derechos y beneficios, si los
11 hubiera, de la sección 1542 del Código Civil de California, que dice:

12 **“Una exoneración general no se extiende a las reclamaciones que el acreedor o la**
13 **parte exonerante no conoce o sospecha que existen a su favor al momento de suscribir**
14 **la exoneración, y que, de haberlas conocido, habrían afectado materialmente a su**
15 **acuerdo con el deudor o la Parte Exonerada”.**

16 6.2 Exoneración por parte de los Miembros del Grupo Participantes: Todos los
17 Miembros del Grupo Participantes, en nombre propio y en el de sus respectivos representantes,
18 agentes, abogados, herederos, administradores, sucesores y cesionarios anteriores y actuales,
19 liberan y exoneran a las Partes Exoneradas de todas las reclamaciones que se alegaron, o que
20 razonablemente podrían haberse alegado, con base en los hechos establecidos en la Denuncia
21 Operativa que surgieron durante el Período del Grupo, incluyendo, por ejemplo, reclamaciones
22 por: (a) no pagar todos los salarios devengados por todas las horas trabajadas y otras horas
23 compensables a las tasas salariales correctas, incluyendo el trabajo fuera del horario laboral, las
24 horas deducidas indebidamente, los salarios mínimos, los salarios regulares, los salarios de horas
25 extras y los salarios correspondientes al doble de la tarifa normal; (b) no proporcionar descansos
26 que cumplan con las normas o una compensación en su lugar; (c) no proporcionar períodos de
27 comida que cumplan con las normas o una compensación en su lugar; (d) no reembolsar los gastos
relacionados con actividades de trabajo (e) no proporcionar declaraciones de salario detalladas,

precisas y completas ni mantener registros de nómina; (f) no pagar oportunamente todos los salarios adeudados durante el empleo y al momento de la separación del empleo; y (g) reclamaciones por competencia desleal. (“Reclamaciones del Grupo Exoneradas”). A excepción de la exoneración del Demandante por parte del demandante y según lo establecido en la sección 6.3 del presente Acuerdo, los Miembros del Grupo Participantes no exonera ninguna otra reclamación, incluidas las reclamaciones por beneficios adquiridos, despido injustificado, violación de la Ley de Empleo y Vivienda Justa, seguro de desempleo, discapacidad, seguro social, compensación laboral o reclamaciones basadas en hechos ocurridos fuera del Período del Grupo.

6.3 Exoneración de las Reclamaciones de PAGA por parte de los Empleados Agraviados. Se considera que todos los Empleados Agraviados exoneran, en nombre propio y en el de sus respectivos representantes, agentes, abogados, herederos, administradores, sucesores y cesionarios anteriores y actuales, a las Partes Exoneradas de todas las reclamaciones de sanciones de PAGA que se alegaron, o razonablemente podrían haberse alegado, con base en los hechos establecidos en la Denuncia Operativa y la Notificación de PAGA que surgieron durante el Período de PAGA, incluidos, por ejemplo, las reclamaciones por: (a) no pagar todos los salarios devengados por todas las horas trabajadas y otras horas compensables a las tasas salariales correctas, incluyendo el trabajo fuera del horario laboral, horas deducidas indebidamente, salarios mínimos, salarios regulares, salarios de horas extras y salarios correspondientes al doble de la tarifa normal; (b) no proporcionar descansos que cumplan con las normas o una compensación en su lugar; (c) no proporcionar períodos de comida que cumplan con las normas o una compensación en su lugar; (d) no proporcionar descansos que cumplan con las normas o una compensación en su lugar (e) no proporcionar declaraciones de salario detalladas, precisas y completas ni mantener registros de nómina; (f) no pagar oportunamente todos los salarios adeudados durante el empleo y al momento de la separación del empleo; y (g) reclamaciones por competencia desleal. (“Reclamaciones Exoneradas de PAGA”). La presente exoneración será vinculante para el Demandante, los Empleados Agraviados y el Estado de California, y quedará excluida por cosa juzgada cualquier reclamación en virtud de PAGA presentada por cualquier persona, incluidos los Empleados Agraviados, en nombre del Estado de California, con respecto a cualquier reclamación basada en las Reclamaciones Exoneradas de PAGA. Los Empleados Agraviados no renuncian a sus reclamaciones por salarios o daños a menos que dichos Empleados Agraviados sean Miembros del Grupo Participantes.

1 **7. MOCIÓN DE APROBACIÓN PRELIMINAR.** El Demandante preparará y presentará
2 una moción de aprobación preliminar (“Moción de aprobación Preliminar”) que cumpla con la
3 lista de verificación actual del Tribunal para aprobaciones preliminares. Se adjunta como Anexo
4 E un formulario de Orden de Aprobación Preliminar.

5 7.1 Declaraciones de los Demandados. Los Demandados y su Abogado de la Defensa
6 declaran que no tienen conocimiento de ningún otro asunto o acción pendiente que afirme
7 reclamaciones que se extinguirán o se verán afectadas negativamente por el presente Acuerdo.
8 Los Demandados y el Abogado de la Defensa no tienen conocimiento de ningún posible conflicto
9 de interés con el Administrador. Los Demandados declaran además que, según sus registros y la
10 información disponible, el español es el único idioma distinto del inglés necesario para garantizar
que la Notificación del Grupo informe adecuadamente a los Miembros del Grupo.

11 7.2 Responsabilidades del Demandante. El Demandante preparará y entregará al
12 Abogado de la Defensa todos los documentos necesarios para obtener la Aprobación Preliminar,
13 incluyendo: (i) una redacción de la notificación y un memorando de apoyo a la Moción de
14 Aprobación Preliminar que incluya un análisis del Acuerdo de conformidad con *Dunk/Kullar* y
15 una solicitud de aprobación del Acuerdo PAGA de conformidad con la sección 2699, inciso (f)(2))
16 del Código Laboral; (ii) una redacción de la Orden Propuesta que Otorga Aprobación Preliminar
17 y Aprobación del Acuerdo de PAGA; (iii) una redacción del Paquete de Notificación propuesto;
18 (iv) una declaración firmada del Administrador en la que se adjunte su oferta de “no exceder”
19 para administrar el Acuerdo y que se certifique su disposición a prestar sus servicios, su
20 competencia, los procedimientos operativos para proteger la seguridad de los Datos del Grupo,
21 los montos de la cobertura del seguro por cualquier violación de los datos, malversación de fondos
22 u otras irregularidades, y todos los hechos relevantes a cualquier conflicto de interés real o
23 potencial con los Miembros del Grupo, y la naturaleza y el alcance de cualquier relación
24 financiera con el Demandante, el Abogado del Grupo, los Demandados o el Abogado de la
25 Defensa; (v) una declaración firmada por el Demandante en la que confirme su voluntad y
26 competencia para prestar sus servicios y reporte todos los hechos relevantes para cualquier
27 conflicto de interés real o potencial con los Miembros del Grupo, y/o el Administrador; (vi) una
28 declaración firmada por cada bufete de los Abogados del Grupo en la que se certifique su
competencia para representar a los Miembros del Grupo; su transmisión oportuna a la LWDA de
todos los documentos PAGA necesarios (notificación inicial de violaciones (Código Laboral,

sección 2699.3, inciso (a)), Denuncia Operativa (Código Laboral, sección 2699, inciso (1)(1)), el presente Acuerdo (Código Laboral, sección 2699, inciso (1)(2)); (vii) una versión con los cambios marcados del Acuerdo de las partes que muestre todas las modificaciones realizadas al Acuerdo Modelo listo para su presentación ante el Tribunal; y (viii) todos los hechos relevantes a cualquier conflicto de interés real o potencial con los miembros del Grupo y/o el Administrador. En sus Declaraciones, el Demandante y la declaración del Abogado del Grupo deberán manifestar que no tienen conocimiento de ningún otro asunto o acción pendiente que haga valer reclamaciones que se extinguirán o se verán afectadas negativamente por el Acuerdo.

7.3 Responsabilidades del Abogado. El Abogado del Grupo y el Abogado de la Defensa son conjuntamente responsables de finalizar y presentar de forma expedita la Moción de Aprobación Preliminar a más tardar 30 días después de firmar en su totalidad este Acuerdo; obtener una pronta fecha de audiencia para la Moción de Aprobación Preliminar; y de comparecer ante el Tribunal para abogar en pro de la Moción de Aprobación Preliminar. El Abogado del Grupo es responsable de entregar la Aprobación Preliminar del Tribunal al Administrador.

7.4 Deber de Cooperación. Si las Partes no están conformes con algún aspecto de la Moción de Aprobación Preliminar propuesta y/o las declaraciones y documentos de apoyo, el Abogado del Grupo y el Abogado de la Defensa trabajarán juntos de forma expedita en nombre de las Partes reuniéndose en persona o por teléfono, y de buena fe, para resolver el desacuerdo. Si el Tribunal no otorga la Aprobación Preliminar o condiciona la Aprobación Preliminar a cualquier cambio material a este Acuerdo, el Abogado del Grupo y el Abogado de la Defensa trabajarán juntos de forma expedita en nombre de las Partes reuniéndose en persona o por teléfono, y de buena fe, para modificar el Acuerdo y satisfacer de alguna manera las preocupaciones del Tribunal.

8. ADMINISTRACIÓN DE LAS LIQUIDACIONES.

8.1 Selección de Administrador. Las Partes han seleccionado conjuntamente a Apex para actuar como Administrador y han verificado que, como condición para el nombramiento, Apex se compromete a quedar vinculada por el presente Acuerdo y a desempeñar, en calidad de fiduciario, todas las funciones especificadas en el presente Acuerdo a cambio del pago de los Gastos de Administración, incluyendo sin limitación, el cálculo de los Pagos Individuales del Grupo que se emitirán a los Miembros del Grupo Participantes, el Pago Individual de PAGA que

se emitirá a los Empleados Agraviados, el envío de las notificaciones y su traducción al español, la preparación de todos los cheques y envíos, el establecimiento de un fondo de liquidación cualificado y la retención de los diversos pagos de los Demandados que constituyen el Monto Bruto del Acuerdo y los impuestos sobre la nómina del empleador. Las Partes y sus Abogados declaran que no tienen ningún interés o relación, financiera o de otro tipo, con el Administrador, que no sea una relación profesional que surge de experiencias anteriores en la administración de acuerdos.

8.2 Declaración de Impuestos. El Administrador será responsable de calcular los impuestos y retenciones aplicables, incluidos los impuestos sobre la nómina del empleador adeudados por los Demandados, sobre los Pagos Individuales del Grupo, y de pagar los impuestos y retenciones a las autoridades fiscales o gubernamentales correspondientes con los informes necesarios y enviar copias al Abogado de la Defensa. El Administrador emitirá a los Miembros del Grupo Participantes los Formularios W-2 del IRS para las Porciones Salariales de los Pagos Individuales del Grupo, los Formularios 1099 del IRS para las Porciones No Salariales y los Formularios 1099 del IRS a los Empleados Agraviados para los Pagos Individuales de PAGA, tal como se describe en este Acuerdo.

8.3 Fondo de Liquidación Cualificado. El Administrador deberá establecer un fondo de liquidación que cumpla con los requisitos de un Fondo de Liquidación Cualificado (“QSF”, por sus siglas en inglés) según la sección 468B-1 del Reglamento del Tesoro de los Estados Unidos.

8.4 Notificación a los Miembros del Grupo.

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

8.4.2 Haciendo todo lo posible para realizarlo lo antes posible, y en ningún caso más de 14 días después de recibir los Datos del Grupo, el Administrador enviará a todos los Miembros del Grupo identificados en los Datos del Grupo, por correo de primera clase del Servicio Postal de los Estados Unidos (“USPS”), el Paquete de Notificación con traducción al español, si corresponde, sustancialmente en los formularios adjuntos a este Acuerdo como **Anexos A, B, C y D.** En la primera página de la Notificación del Grupo deberá estimar de manera destacada los montos en dólares de cualquier Pago Individual del Grupo y/o Pago Individual de

1 PAGA pagadero al Miembro del Grupo, y el número de Semanas Laborales y Períodos de Pago
2 PAGA (si corresponde) utilizados para calcular estos montos. Antes de enviar por correo los
3 Paquetes de Notificación, el Administrador deberá actualizar las direcciones de los Miembros del
4 Grupo utilizando la base de datos Nacional de Cambio de Dirección.

5 8.4.3 En un plazo máximo de tres (3) días hábiles después de que el
6 Administrador reciba algún Paquete de Notificación devuelto por el Servicio Postal de EE.UU.
7 (USPS) como no entregado, el Administrador deberá volver a enviar por correo el Paquete de
8 Notificación utilizando la dirección de reenvío proporcionada por USPS. Si USPS no proporciona
9 una dirección de reenvío, el Administrador realizará una Búsqueda de Dirección de los Miembros
10 del Grupo, y volverá a enviar por correo el Paquete de Notificación a la dirección más actualizada
11 obtenida. El Administrador no tiene obligación alguna de realizar nuevos intentos para localizar
12 o enviar el Paquete de Notificación a los Miembros del Grupo cuyo Paquete de Notificación haya
13 sido devuelto por USPS por segunda vez.

14 8.4.4 Los plazos para las objeciones por escrito de los Miembros del Grupo, las
15 Impugnaciones de las Semanas Laborales y/o los Períodos de Pago (disputas) y las Solicitudes de
16 Exclusión se ampliarán 14 días adicionales además de los 60 días previstos en la Notificación del
17 Grupo para todos los Miembros del Grupo cuya notificación se vuelva a enviar por correo. El
18 Administrador informará al Miembro del Grupo de la ampliación del plazo con el Paquete de
19 Notificación enviado nuevamente por correo.

20 8.4.5 Si el Administrador, los Demandados o el Abogado del Grupo son
21 contactados o descubren de alguna otra manera a personas que creen que debería haber sido
22 incluidas en los Datos del Grupo y que deberían haber recibido el Paquete de Notificación, las
23 Partes se reunirán y consultarán de forma expedita en persona o por teléfono, y de buena fe, en
24 un esfuerzo por decidir si se les incluye como Miembros del Grupo. Si las Partes así lo deciden,
25 dichas personas serán Miembros del Grupo con los mismos derechos que los demás Miembros
26 del Grupo, y el Administrador les enviará, por correo electrónico o entrega de un día para otro,
27 una Notificación del Grupo en la que se les solicitará que ejerzan las opciones previstas en el
28 presente Acuerdo en un plazo máximo de 14 días después de recibir la Notificación del Grupo, o
los plazos indicados en la Notificación del Grupo, lo que sea primero.

25 8.5 Solicitudes de Exclusión (Opt-Outs).

26 8.5.1 Los Miembros del Grupo que deseen excluirse (optar por no participar) del
27 Acuerdo del Grupo deben enviar al Administrador, por fax, correo electrónico o correo postal,
28 una Solicitud de Exclusión por escrito y firmada en un plazo máximo de 60 días después de que

1 el Administrador envíe por correo el Paquete de Notificación (más 14 días adicionales para los
2 Miembros del Grupo cuyo Paquete de Notificación se vuelva a enviar por correo). Una Solicitud
3 de Exclusión es una carta de un Miembro del Grupo o su representante que comunica
4 razonablemente la elección del Miembro del Grupo de ser excluido del Acuerdo e incluye el
5 nombre, la dirección y la dirección de correo electrónico o el número de teléfono del Miembro
6 del Grupo. Para que sea válida, una Solicitud de Exclusión debe enviarse en el plazo establecido
7 por fax, correo electrónico o tener el sello postal antes del Plazo de Respuesta. Se puede utilizar
8 para este propósito un formulario de Elección de No Participar en el Acuerdo, adjunto como
9 Anexo B, pero no es obligatorio.

10 8.5.2 El Administrador no puede rechazar una Solicitud de Exclusión por no
11 considerarla válida porque no contenga toda la información que se especifica en la Notificación
12 del Grupo. El Administrador aceptará cualquier Solicitud de Exclusión como válida si puede
13 determinar razonablemente la identidad de la persona como Miembro del Grupo y el deseo del
14 Miembro del Grupo de ser excluido. La determinación del Administrador será definitiva y no será
15 apelable ni susceptible de impugnación de ninguna otra manera. Si el Administrador tiene motivos
16 para cuestionar la autenticidad de una Solicitud de Exclusión, el Administrador podrá solicitar
17 pruebas adicionales de la identidad del Miembro del Grupo. La determinación de autenticidad del
18 Administrador será definitiva y no será apelable ni susceptible de impugnación de ninguna otra
19 manera.

20 8.5.3 Los Miembros del Grupo que no presenten una Solicitud de Exclusión
21 válida y oportuna se considerará Miembros del Grupo Participantes de conformidad con el
22 presente Acuerdo, con derecho a todos los beneficios y sujeto a todos los términos y condiciones
23 del Acuerdo, incluidas las Exoneraciones de los Miembros del Grupo Participantes de
24 conformidad con los Párrafos 6.2 y 6.3 del presente Acuerdo, independientemente de si el
25 Miembro del Grupo Participante efectivamente recibe la Notificación del Grupo o se opone al
26 Acuerdo.

27 8.5.4 Todo Miembro del Grupo que presente una Solicitud de Exclusión válida
28 y oportuna se considerará Miembro del Grupo No Participante y no recibirá un Pago Individual
del Grupo ni tendrá derecho a objetar los componentes de la Acción de Grupo del Acuerdo. Ya
que las futuras reclamaciones de PAGA están sujetas a la preclusión de las reclamaciones en el
momento de la entrada en vigor de la Sentencia, se considera que los Miembros del Grupo No
Participantes que sean Empleados Agraviados renuncian a las reclamaciones identificadas en el
Párrafo 6.3 de este Acuerdo y son elegibles para un Pago Individual de PAGA.

8.6 Impugnación del Cálculo de las Semanas Laborales y los Períodos de Pago de

1 PAGA. Cada Miembro del Grupo dispondrá de 60 días después de que el Administrador envíe
2 por correo el Paquete de Notificación (más 14 días adicionales para los Miembros del Grupo cuyo
3 Paquete de Notificación se vuelva a enviar por correo) para impugnar en número de Semanas
4 Laborales del Grupo y los Períodos de Pago de PAGA (si los hubiera) asignados al Miembro del
5 Grupo en la Notificación del Grupo. Esto también se conoce como disputa. Se puede utilizar para
6 este propósito un formulario de Disputa de Semanas Laborales del Grupo y los Período de Pago
7 de PAGA, adjunto como Anexo C, pero no es obligatorio. El Miembro del Grupo puede impugnar
8 la asignación comunicándose con el Administrador por fax, correo electrónico o correo postal. El
9 Administrador debe recomendarle al Miembro del Grupo impugnante que presente
10 documentación de justificativa. En ausencia de documentación contraria, el Administrador tiene
11 derecho a asumir que las Semanas Laborales y los Períodos de Pago de PAGA contenidos en la
12 Notificación del Grupo son correctos siempre que sean consistentes con los Datos del Grupo. La
13 determinación del Administrador de la asignación de las Semanas Laborales y/o los Períodos de
14 Pago de cada Miembro del Grupo será definitiva y no apelable ni susceptible de impugnación. El
Administrador deberá proporcionar de forma expedita las copias de todas las impugnaciones al
cálculo de las Semanas Laborales y/o los Períodos de Pago al Abogado de la Defensa y al
Abogado del Grupo, y la determinación del Administrador sobre dichas impugnaciones.

15 8.7 Objeciones al Acuerdo.

16 8.7.1 Sólo los Miembros del Grupo Participantes pueden objetar los
17 componentes de la Acción de Grupo de la Conciliación y/o este Acuerdo, incluyendo impugnar
18 la imparcialidad de la Conciliación y/o los montos solicitados para el Pago de Honorarios del
19 Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y/o el Pago por los
Servicios del Representante del Grupo.

20 8.7.2 Los Miembros del Grupo Participantes pueden enviar objeciones por
21 escrito al Administrador, por fax, correo electrónico o correo postal. Como alternativa, los
22 Miembros del Grupo Participantes pueden comparecer ante el Tribunal (o contratar a un abogado
23 para que comparezca ante el Tribunal) para presentar objeciones verbales en la Audiencia de
Aprobación Final. Los Miembro del Grupo Participantes que elijan enviar una objeción por
escrito al Administrador deberán hacerlo en un plazo de 60 días después de que el Administrador
haya enviado por correo el Paquete de Notificación (más 14 días adicionales para los Miembros
del Grupo cuyo Paquete de Notificación haya sido enviado nuevamente por correo). Se puede
utilizar para este propósito, el formulario de Objeción adjunto como Anexo D, pero no es
obligatorio.

27 8.7.3 Los Miembros del Grupo No Participantes no tienen derecho a objetar

ninguno de los componentes de la acción de grupo del Acuerdo.

8.8 Deberes del Administrador. El Administrador tiene la obligación de cumplir o acatar todas las tareas que deben realizarse u observarse por el Administrador contenidas en este Acuerdo o de alguna otra manera.

8.8.1 Sitio web, dirección de correo electrónico y número gratuito. El Administrador establecerá, mantendrá y utilizará un sitio web en Internet para publicar información de interés para los Miembros del Grupo, incluyendo la fecha, hora y lugar de la Audiencia de Aprobación Final y copias del Acuerdo de Conciliación, la Moción de Aprobación Preliminar, la Aprobación Preliminar, el Paquete de Notificación, la Moción de Aprobación Final, la Moción de Pago de Honorarios al Abogado del Grupo, el Pago de Gastos de Litigio al Abogado del Grupo y el Pago por los Servicios del Representante del Grupo, la Aprobación Final y la Sentencia. El Administrador también mantendrá y supervisará una 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 expedita y continuada las Solicitudes de Exclusión para determinar su validez. En un plazo máximo de cinco (5) días después del vencimiento del plazo para presentar Solicitudes de Exclusión, el Administrador enviará por correo electrónico una lista al Abogado del Grupo y al Abogado de la Defensa que contenga (a) los nombres y otra información de identificación de los Miembros del Grupo que hayan presentado oportunamente Solicitudes de Exclusión válidas (“Lista de Exclusión”); (b) los nombres y otra información de identificación 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).

8.8.3 Informes Semanales. El Administrador debe proporcionar semanalmente informes por escrito al Abogado del Grupo y al Abogado de la Defensa que, entre otras cosas, detallen el número de: Paquetes de Notificación enviados o reenviados por correo, Paquetes de Notificación devueltos sin entregar, Solicitudes de Exclusión (ya sean válidas o no válidas) recibidas, objeciones recibidas, impugnaciones de las semanas laborales y/o los Períodos de Pago recibidas y/o resueltas, y cheques enviados por correo de los Pagos Individuales del Grupo y los Pagos Individuales de PAGA (“Informe Semanal”). Los Informes Semanales deben incluir la evaluación del Administrador sobre la validez de las Solicitudes de Exclusión y adjuntar copias

de todas las Solicitudes de Exclusión y objeciones recibidas.

8.8.4 Impugnaciones de las Semanas Laborales y/o los Períodos de Pago. El Administrador tiene la autoridad de abordar y tomar decisiones finales consistentes con los términos de este Acuerdo sobre todas las impugnaciones de los Miembros del Grupo sobre el cálculo de las Semanas Laborales y/o los Períodos de Pago. La decisión del Administrador será definitiva y no será apelable ni susceptible de impugnación.

8.8.5 Declaración del Administrador. En un plazo máximo de 14 días antes de la fecha en la que el Demandante debe presentar la Moción de Aprobación Final del Acuerdo, el Administrador proporcionará al Abogado del Grupo y al Abogado de la Defensa, una declaración firmada adecuada para presentar ante el Tribunal en la que certifique su debida diligencia y el cumplimiento de todas sus obligaciones de conformidad con el presente Acuerdo, incluyendo, entre otras, el envío por correo de los Paquetes de Notificación, los Paquetes de Notificación devueltos como no entregados, el reenvío por correo de los Paquetes de Notificación, los intentos de localizar a los Miembros del Grupo, el número total de Solicitudes de Exclusión del Acuerdo que recibió (ya sea válidas y no válidas), el número de objeciones por escrito y adjuntará la Lista de Exclusiones. El Administrador complementará su declaración según sea necesario o solicitado por las Partes y/o 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 máximo de 10 días después de que el Administrador desembolse todos los fondos del Monto Bruto del Acuerdo, el Administrador proporcionará al Abogado del Grupo y al Abogado de la Defensa un informe final que detalle sus desembolsos sólo por número de identificación del empleado de todos los pagos realizados de conformidad con el presente Acuerdo. Por lo menos 15 días antes de cualquier plazo establecido por el Tribunal, el Administrador preparará y presentará al Abogado del Grupo y al Abogado de la Defensa una declaración firmada apta para su presentación ante el Tribunal 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 DE TAMAÑO DEL GRUPO Y CLÁUSULA DE REVISIÓN. En base a una revisión de sus registros hasta la fecha, los Demandados estiman que hay 111 Miembros del Grupo que colectivamente trabajaron un total de 17,853 Semanas Laborales al 10 de marzo de 2025 (es decir, a la fecha en que las Partes participaron en la mediación). Si el número

1 de Miembros del Grupo y/o Semanas Laborales a la fecha en que el Tribunal apruebe el acuerdo
2 excede el número de Miembros del Grupo y/o Semanas Laborales en más del 10%, el Monto
3 Bruto del Acuerdo, incluido el Pago de Honorarios al Abogado del Grupo, aumentará
4 proporcionalmente según el número de Semanas Laborales adicionales o Miembros del Grupo
5 por encima del 110% de las estimaciones de los Demandados, lo que resulte en un aumento mayor
6 en el Monto Bruto del Acuerdo. Como alternativa, los Demandados pueden optar por finalizar el
7 Período del Grupo y el Período de PAGA en una fecha anterior, a discreción de los Demandados,
8 con el fin de limitar las Semanas Laborales cubiertas y el número de Miembros del Grupo a no
9 más del 110% de las estimaciones de los Demandados (“Fecha de Finalización Alternativa”). Los
10 Demandados y el Abogado de la Defensa deberán cooperar con los Abogados del Grupo para
11 proporcionar información oportuna antes de la presentación de la Moción del Demandante. Para
12 la Aprobación Preliminar con respecto a si se ha activado la cláusula de revisión y, si corresponde,
13 si los Demandados están optando por acortar el Período del Grupo y el Período PAGA de
14 conformidad con este párrafo.

15 **10. DERECHO DEL DEMANDADO A DESISTIR.** Si el número de Solicitudes de
16 Exclusión válidas identificadas en la Lista de Exclusión excede 10.00% del total de todos los
17 Miembros del Grupo, los Demandados pueden, aunque no están obligados, optar por retractarse
18 del Acuerdo. Las Partes acuerdan que, si los Demandados desisten, el Acuerdo será nulo de pleno
19 derecho, no tendrá validez ni efecto alguno y ninguna de las Partes tendrá ninguna otra obligación
20 de cumplir con este Acuerdo; con la condición de que, en cualquier caso, los Demandados
21 seguirán siendo responsables de pagar todos los Gastos de Administración del Acuerdo incurridos
22 hasta ese momento. Los Demandados deben notificar al Abogados del Grupo y al Tribunal su
23 elección de retirarse a más tardar siete (7) días después de que el Administrador envíe la Lista de
24 Exclusión final al Abogado de la Defensa; las elecciones tardías no tendrán efecto.

25 **11. MOCIÓN DE APROBACIÓN FINAL.** A más tardar 16 días hábiles antes de la
26 Audiencia de Aprobación Final programada, el Demandante presentará ante el Tribunal una
27 moción para la aprobación final del Acuerdo que incluye una solicitud de aprobación del acuerdo
28 PAGA conforme a la sección 2699, inciso (l) del Código Laboral, una Orden de Aprobación Final
Propuesta y una Sentencia propuesta (colectivamente “Moción para la Aprobación Final”). El
Demandante deberá proporcionar propuestas preliminares de estos documentos al Abogado de la
Defensa a más tardar tres (3) días antes de presentar la Moción de Aprobación Final. El Abogado

del Grupo y el Abogado de la Defensa se reunirán y consultarán de forma expedita en persona o por teléfono, y de buena fe, para resolver cualquier desacuerdo relacionado con la Moción de Aprobación Final.

11.1 Respuesta a las Objeciones. Cada Parte se reserva el derecho de responder a cualquier objeción planteada por un Miembro del Grupo Participante, incluido el derecho a presentar documentos de respuesta en el Tribunal a más tardar cinco (5) días hábiles antes de la Audiencia de Aprobación Final, o según lo ordenado o aceptado por el Tribunal.

11.2 Deber de Cooperación. Si el Tribunal no otorga la Aprobación Final o condiciona la Aprobación Final a cualquier cambio material del Acuerdo (incluido, entre otros, el alcance de la exoneración que otorgarán los Miembros del Grupo), las Partes colaborarán de buena fe y de forma expedita para resolver las preocupaciones del Tribunal revisando el Acuerdo según sea necesario para obtener la Aprobación Final. La decisión del Tribunal de otorgar una cantidad menor a la solicitada para el Pago por los Servicios del Representante del Grupo, el Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y/o el Pago de Gastos del Administrador no constituirá una modificación material del Acuerdo dentro del significado de este párrafo.

11.3 Continuación de la Jurisdicción del Tribunal. Las Partes acuerdan que, una vez dictada la Sentencia, el Tribunal conservará la jurisdicción sobre las Partes, la Acción y el Acuerdo únicamente a los efectos de (i) hacer cumplir este Acuerdo y/o la Sentencia, (ii) atender los asuntos de administración del acuerdo y (iii) atender los asuntos posteriores a la Sentencia que estén permitidos por la ley.

11.4 Renuncia al Derecho de Apelación. Siempre que la Sentencia sea consistente con los términos y condiciones de este Acuerdo, incluyendo específicamente el Pago de Honorarios del Abogado del Grupo y el Pago de Gastos de Litigio del Abogado del Grupo establecidos en este Acuerdo, las Partes, sus respectivos abogados y todos los Miembros del Grupo Participantes que no opusieron al Acuerdo según lo dispuesto en este Acuerdo, renuncian a todos los derechos de apelación de la Sentencia, incluidos todos los derechos a procedimientos posteriores a la sentencia y de apelación, el derecho a presentar mociones para anular la sentencia, mociones para un nuevo juicio, escritos extraordinarios y apelaciones. La renuncia a la apelación no incluye ninguna renuncia al derecho a oponerse a dichas mociones, escritos o apelaciones. Si un objetor apela la Sentencia, las obligaciones de las Partes de cumplir el presente Acuerdo quedaran

suspendidas hasta que la apelación se resuelva definitivamente y la Sentencia sea definitiva, excepto en lo que respecta a asuntos que no afecten el pago del Monto Neto del Acuerdo.

11.5 Órdenes del Tribunal de Apelaciones de Anular, Revocar o Modificar Materialmente la Sentencia. Si el Tribunal revisor anula, revoca o modifica la Sentencia de una manera que requiera una modificación material de este Acuerdo (incluido, entre otros, el alcance de la exoneración que otorgarán los Miembros del Grupo), este Acuerdo será nulo y sin efecto. No obstante, las Partes colaborarán de buena fe y de forma expedita para resolver las preocupaciones del tribunal de apelación y obtener la Aprobación Final y la entrada en vigor de la Sentencia, compartiendo, en partes iguales, cualquier Gasto Administrativo adicional razonablemente incurrido después de la remisión. Una decisión de apelación de anular, revocar o modificar la adjudicación del Tribunal del Pago por los Servicios del Representante del Grupo o cualquier pago al Abogado del Grupo no constituirá una modificación material de la Sentencia dentro del significado de este párrafo, siempre que el Monto Bruto del Acuerdo permanezca sin cambios.

12. SENTENCIA ENMENDADA. Si se requiere una sentencia enmendada de conformidad con la sección 384 del Código de Procedimiento Civil, las Partes colaborarán de buena fe para presentar conjuntamente una propuesta de sentencia enmendada.

13. DISPOSICIONES ADICIONALES.

13.1 Sin Admisión de Responsabilidad, Certificación del Grupo o Manejabilidad Representativa para Otros Fines. El presente Acuerdo representa un compromiso y liquidación de las reclamaciones objeto de gran controversia. Nada de lo dispuesto en el presente Acuerdo pretende ni debe interpretarse como una admisión por parte de los Demandados de que alguna de las alegaciones de la Denuncia Operativa tiene fundamento o de que los Demandados tienen alguna responsabilidad por ninguna de las reclamaciones presentadas; tampoco se debe pretender ni interpretarse como una admisión por parte del Demandante de que las defensas de los Demandados en la Acción tienen fundamento. Las Partes acuerdan que la certificación del Grupo y el tratamiento representativo se otorgan únicamente a los efectos de este Acuerdo. Si, por cualquier motivo, el Tribunal concede la Aprobación Preliminar, la Aprobación Final o dicta Sentencia, los Demandados se reservan el derecho de impugnar la certificación de cualquier clase

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

6 13.2 Confidencialidad Antes de la Aprobación Preliminar. El Demandante, el
7 Abogado del Grupo, los Demandados y el Abogado de la Defensa acuerdan por separado que,
8 hasta que se presente la Moción de Aprobación Preliminar del Acuerdo, no divulgarán, difundirán
9 y/o publicarán, como tampoco pedirán ni permitirán que otra persona divulgue, difunda o
10 publique, ninguno de los términos del Acuerdo directa o indirectamente, específica o
11 generalmente, a ninguna persona, corporación, asociación, agencia gubernamental u otra entidad
12 excepto: (1) a los abogados, contadores o cónyuges de las Partes, a quienes se les darán
13 instrucciones de mantener la confidencialidad del presente Acuerdo; (2) al abogado en un asunto
14 relacionado; (3) en la medida necesaria para declarar los ingresos a las autoridades fiscales
15 correspondientes; (4) en respuesta a una orden o citación judicial; o (5) en respuesta a una consulta
16 o citación emitida por una agencia gubernamental estatal o federal.

16 Cada Parte se compromete a notificar inmediatamente a la otra Parte sobre
17 cualquier orden, consulta o citación judicial o de la agencia que solicite dicha información. El
18 Demandante, el Abogado del Grupo, los Demandados y el Abogado de la Defensa se
19 comprometen individualmente no iniciar, directa o indirectamente, ninguna conversación u otra
20 comunicación, antes de la presentación de la Moción de Probación Preliminar, con terceros en
21 relación con este Acuerdo o los asuntos que dieron lugar a este Acuerdo, excepto para responder
22 únicamente que "el asunto se resolvió" o palabras a tal efecto. Este párrafo no restringe las
23 comunicaciones de los Abogados del Grupo con los Miembros del Grupo de conformidad con las
24 obligaciones éticas de los Abogados del Grupo con respecto a los Miembros del Grupo.

24 13.3 No se permite solicitar. Las Partes se comprometen individualmente que ellas y
25 sus respectivos abogados y empleados no solicitarán a ningún Miembro del Grupo que opte por
26 no participar o se oponga al Acuerdo, o que apele la Sentencia. Nada de lo dispuesto en este
27 párrafo se interpretará como una restricción a la capacidad de los Abogados del Grupo de
28 comunicarse con los Miembros del Grupo, de conformidad con las obligaciones éticas de los

1 Abogados del Grupo con respecto a los Miembros del Grupo.

2 13.4 Acuerdo Integrado. Una vez firmado por todas las Partes y sus abogados, el
3 presente Acuerdo junto con sus anexos constituirá el acuerdo completo entre las Partes en relación
4 con el Acuerdo y sustituyendo todas y cada una de las declaraciones, garantías, convenios o
5 incentivos verbales ofrecidas a o por cualquiera de las Parte.

6 13.5 Autorización del Abogado. El Abogado del Grupo y el Abogado de la Defensa
7 garantizan y declaran individualmente que están autorizados por el Demandante y el Demandado,
8 respectivamente, a tomar todas las medidas apropiadas requeridas o permitidas para ser tomadas
9 por dichas Partes de conformidad con este Acuerdo para hacer efectivos sus términos, y para
10 suscribir cualquier otro documento razonablemente requerido para hacer efectivos los términos
de este Acuerdo, incluyendo cualquier enmienda a este Acuerdo.

11 13.6 Cooperación. Las Partes y sus abogados cooperarán entre sí y harán todo lo
12 posible, de buena fe, para implementar el Acuerdo mediante, entre otras cosas, la modificación
13 del Acuerdo de Conciliación, la presentación de pruebas suplementarias y complementación de
14 puntos y autoridades según lo solicite el Tribunal. En caso de que las Partes no puedan llegar a
15 un compromiso sobre la forma o el contenido de cualquier documento necesario para implementar
16 el Acuerdo, o sobre cualquier modificación del Acuerdo que pueda resultar necesaria para
17 implementar el Acuerdo, las Partes solicitarán la asistencia de un mediador y/o del Tribunal para
su resolución.

18 13.7 Sin Cesiones Previas. Las Partes declaran y garantizan individualmente que no
19 han cedido, transferido, gravado ni intentado ceder, transferir o gravar, directa o indirectamente,
20 a ninguna persona o entidad ni parte de ninguna responsabilidad, reclamación, demanda, acción,
21 causa de acción o derecho liberado y exonerado por la Parte en este Acuerdo.

22 13.8 Sin Asesoramiento Fiscal. Ni el Demandante, ni los Abogados del Grupo, ni los
23 Demandados ni el Abogado de la Defensa proporcionan ningún tipo de asesoramiento en relación
24 con los impuestos o la tributación, ni nada de lo contenido en este Acuerdo se considerará como
25 tal en el significado de la Circular 230 del Departamento del Tesoro de los Estados Unidos (31
CFR, Parte 10, en su versión enmendada) ni de ninguna otra forma.

26 13.9 Modificación del Acuerdo. El presente Acuerdo, y todas sus partes, podrán ser
27 enmendadas, modificadas, cambiadas o eliminadas únicamente mediante un documento expreso

1 por escrito firmado por todas las Partes o sus representantes y aprobado por el Tribunal.

2 13.10 Acuerdo Vinculante para los Sucesores. El presente Acuerdo será vinculante y
3 redundará en beneficio de los sucesores de cada una de las Partes.

4 13.11 Ley Aplicable. Todos los términos y condiciones de este Acuerdo y sus anexos
5 se regirán e interpretarán de conformidad con las leyes internas del estado de California, sin tener
6 en cuenta los principios de conflicto de leyes.

7 13.12 Cooperación en la Redacción. Las Partes han cooperado en la redacción y
8 preparación de este Acuerdo. El presente Acuerdo no se interpretará en contra de ninguna de las
9 Partes con el argumento de que la Parte fue la que redactó o participó en la redacción.

10 13.13 Confidencialidad. En la medida en que lo permita la ley, todos los acuerdos
11 firmados y las órdenes dictadas durante la Acción y en el presente Acuerdo en relación con la
12 confidencialidad de la información subsistirán después de la suscripción del presente Acuerdo.

13 13.14 Uso y Devolución de Datos del Grupos. La información proporcionada al
14 Abogados del Grupo de conformidad con el Código de Pruebas de California §1152 y todas las
15 copias y extractos de los Datos del Grupo proporcionados al Abogado del Grupo por los
16 Demandados en relación con la mediación, otras negociaciones de conciliación o en relación con
17 el Acuerdo, podrán utilizarse únicamente con respecto a este Acuerdo, y para ningún otro
18 propósito, y no se podrán utilizarse de ninguna manera que viole cualquier acuerdo contractual,
19 estatuto o norma judicial existente. A más tardar 90 días después de la fecha en que el Tribunal
20 cumpla con la obligación del Administrador de proporcionar una Declaración que confirme el
21 pago final de todos los fondos del Acuerdo, el Demandante deberá destruir todas las versiones en
22 papel y electrónicas de los Datos del Grupo recibidos de los Demandados a menos que, antes de
23 que el Tribunal cumpla con la obligación del Administrador, los Demandados soliciten por escrito
24 al Abogado del Grupo la devolución, en lugar de la destrucción, de los Datos del Grupo.

25 13.15 Títulos. El título descriptivo de cualquier sección o párrafo de este Acuerdo se
26 incluye únicamente para facilitar su referencia y no constituye parte de este Acuerdo.

27 13.16 Días calendario. A menos que se indique lo contrario, todas las referencias a
28 “días” en este Acuerdo se refieren a días calendario. En el caso de que cualquier fecha o plazo

establecido en este Acuerdo caiga en un fin de semana o en un día festivo federal legal, dicha fecha o plazo será el primer día hábil siguiente.

13.17 Notificación. Todas las notificaciones, escritos u otras comunicaciones entre las Partes en relación con el presente Acuerdo se harán por escrito y se considerarán debidamente entregadas a partir del tercer día hábil después del envío por correo postal de los Estados Unidos, o el día de envío por correo electrónico o mensajero, dirigidas de la siguiente manera:

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

Al Demandado:
Alfred J. Landegger, Esq.
Evelyn Zarraga, Esq.
James M. Bacon, Esq.
Landegger Verano, ALC
15760 Ventura Blvd., Suite 1200
Encino, CA 91436
alfred@landeggeresq.com
evelyn@landeggeresq.com
james@landeggeresq.com

13.18 Firma en varias copias originales. Este Acuerdo puede firmarse en una o más copias originales por fax, electrónicamente (es decir, DocuSign) o correo electrónico, que para los propósitos de este Acuerdo se aceptarán como originales. Todas las copias originales firmadas y cada una de dicha copia original se considerarán un único y mismo documento si los abogados de las Partes intercambian entre sí copias originales firmadas. Toda copia original firmada será admisible como prueba para acreditar la existencia y contenido del presente Acuerdo.

13.19 Suspensión del Litigio. Las Partes acuerdan que, después de firmar el presente Acuerdo, el litigio quedará suspendido, excepto para hacer efectivos los términos de este Acuerdo. Asimismo, las Partes acuerdan además que, después de firmar este Acuerdo, de conformidad con la sección 583.330 del Código de Procedimiento Civil (CCP, por sus siglas en inglés), se

extenderá la fecha para llevar el caso a juicio de conformidad con la sección 583.310 del Código de Procedimiento Civil (CCP) durante todo el período de este proceso de conciliación.

Fecha: 7²²_____, 2025

Por: Armando A
ARMANDO ASCENCIO

Fecha: _____, 2025

Por: _____
Robert Lopez en nombre propio y como
Director Ejecutivo de Monarch Litho
Inc.

APROBADO EN CUANTO A LA FORMA:

THE SPIVAK LAW FIRM

Fecha: _____, 2025

Por: _____
DAVID GLENN SPIVAK, Abogado
del Demandante, ARMANDO
ASCENCIO, y todas las demás
personas en situación similar

LANDEGGER VERANO, ALC

Fecha: _____, 2025

Por: _____
EVELYN ZARRAGA, Abogados de
los Demandados

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

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

Blanca Edwards

1

EXHIBIT 2



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

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

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

October 15, 2024

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

Re: Armando Ascencio / Monarch Litho Inc.

To Whom It May Concern:

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

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

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Statement of Facts

On approximately September 15, 1999, the Monarch Employers began to employ Ascencio in Montebello in the position of hourly, non-exempt mechanic. The Monarch Employers continuously employed him in that capacity until on or about July 26, 2024 when his employment ended.

At all relevant times, the Monarch Employers issued wages to Ascencio and all of the other Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times, the Monarch Employers classified Ascencio and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Monarch Employers failed to compensate Ascencio and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Monarch Employers required Ascencio and all of the other Aggrieved Employees to work off the clock without compensation after they had already clocked out at the end of their shifts. The Monarch Employers further arbitrarily deducted several minutes from the hours Ascencio and all of the other Aggrieved Employees worked and recorded and failed to pay them for all hours worked. For example, for the period of July 22, 2024 to July 28, 2024, Ascencio reported 24 hours and 37 minutes on his time records (in addition to eight (8) hours of sick time). The Monarch Employers, however, compensated him only for 24 hours of worktime (in addition to eight (8) hours of sick time). In other words, the Monarch Employers arbitrarily deducted 37 minutes from Ascencio's hours worked and failed to compensate him for all overtime hours worked. The Monarch Employers also often called Ascencio and all of the other Aggrieved Employees on their days off to discuss work related matters such as the status of the printing machines without compensating them for such hours worked. Further, The Monarch Employers arbitrarily deducted several minutes from Ascencio and all of the other Aggrieved Employees' hours worked if they arrived to work a few minutes after they scheduled start time.

As result of the off the clock work and the deducted wages discussed above, the Monarch Employers also failed to compensate Ascencio 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 Monarch Employers also failed to compensate Ascencio and all of the other Aggrieved

Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek.

At all relevant times, the Monarch Employers failed to provide Ascencio and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Monarch understaffed its shifts and failed to provide the employees with off-duty, uninterrupted, meal periods before they worked more than five (5) hours in a workday. The Monarch Employers required Ascencio and all of the other Aggrieved Employees to monitor their personal cellphone at all times and respond to their managers' calls and messages even when they tried to take a meal period. On rare occasions that Ascencio and the other Aggrieved Employees were able to take a meal break, it was always after they had already worked more than five (5) hours and it was often interrupted and for less than 30 minutes. Further, Monarch failed to provide a second meal period when the employees worked more than 10 hours in a workday. The Monarch Employers also failed to pay premium wages for days on which they failed to provide Ascencio and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Monarch Employers failed to authorize and permit Ascencio and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Monarch never scheduled rest breaks for its employees and failed to provide them with a 10 minute, uninterrupted, off-duty rest break for every four (4) hours worked or major fraction thereof. Further, Monarch failed to provide a third rest break when the employees worked more than 10 hours in a workday. The Monarch Employers also failed to pay premium wages for days on which they failed to authorize and permit Ascencio and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Monarch Employers required Ascencio and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Monarch Employers required Ascencio and all of the other Aggrieved Employees to supply mobile phones to perform their job duties and to communicate with the managers and supervisor. However, the Monarch Employers did not provide these items and did not reimburse Ascencio and the other Aggrieved Employees for their cellphone expenses.

As discussed above, the Monarch Employers unlawfully deducted wages belonging to Ascencio and all of the other Aggrieved Employees.

At all relevant times, the Monarch Employers failed to issue to Ascencio 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 Monarch Employers knowingly and intentionally failed to state on the wage statements they issued to Ascencio 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, all unlawfully deducted wages, gross wages earned, net wages earned, all hours work at each rate of pay, and other required information.

The Monarch Employers also failed to timely pay Ascencio and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Monarch also failed to provide the employees with their final wages until days after their last day worked.

The Monarch Employers failed to maintain accurate employee records of Ascencio and all of the other Aggrieved Employees.

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

- (a) The Monarch Employers failed to pay Ascencio and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Monarch Employers failed to provide Ascencio and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Monarch Employers failed to authorize and permit Ascencio and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Monarch Employers failed to compensate Ascencio and all of the other Aggrieved Employees at one hour's pay for each day in which the Monarch Employers failed to provide them with one or more meal periods as required by law;

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

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

The Wage Order

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

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

occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; door-keepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radiotelephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations

Wage Order, § 2(O). At all relevant times during the applicable limitations period, the Monarch Employers, Ascencio, and all of the Aggrieved Employees were covered by the Wage Order because the Monarch Employers operated, and Ascencio, and all of the Aggrieved Employees, worked for the Monarch Employers as printers, their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Ascencio 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.

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

- 1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
- 2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods

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

In addition, Labor Code section 226.7 states:

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

As discussed above, at all relevant times, the Monarch Employers failed to provide Ascencio and all of the other Aggrieved Employees with all timely, off-duty, 30 minute

meal periods. Further, Monarch failed to provide a second meal period when the employees worked more than 10 hours in a workday. Furthermore, the Monarch Employers failed to pay premium wages for days on which they failed to provide Ascencio and all of the other Aggrieved Employees with timely meal periods. Accordingly, Ascencio now seeks civil penalties for these Labor Code violations that the Monarch Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

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

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

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

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

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

Additionally, the Wage Order states,

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

required by the trade or craft.

Wage Order, § 9(B).

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

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

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

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As discussed above, the Monarch Employers deducted wages from the wages earned by Ascencio and all of the other Aggrieved Employees in violation of Labor Code § 221. Accordingly, Ascencio seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

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

At all relevant times during the applicable limitations period, the Monarch 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 Monarch Employers failed to state in the wage statements they issued to Ascencio 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 (as described above). The Monarch Employers knowingly and intentionally failed to state on the wage statements they issued to Ascencio 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 doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, net wages earned, all hours work at each rate of pay, and other required information.

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

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

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

The Monarch Employers failed to compensate Ascencio and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and other compensation, at the intervals stated above. As a result, the Monarch Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly,

Ascencio now seeks civil penalties for the Labor Code violations that the Monarch Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

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

The Monarch Employers failed to pay Ascencio 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 Ascencio, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and other compensation. Additionally, the Monarch Employers failed to issue to Ascencio and all of the other Aggrieved Employees whose employment ended their final paychecks until days after the termination. By failing to pay Ascencio and all of the other Aggrieved Employees as set forth above at the end of employment, the Monarch Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of

himself and all of the other Aggrieved Employees, Ascencio seeks civil penalties from the Monarch Employers as follows:

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

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer

shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

be provided to employees. An accurate production record shall be maintained by the employer.

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

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

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

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

In relevant part, Labor Code section 558.1 states:

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

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Re: Armando Ascencio

October 15, 2024

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

At all relevant times, Robert Lopez, George Lopez, and Eddie Audelo were the employers of Ascencio and all of the other Aggrieved Employees, and/or “owners,” “managing agents,” and/or “officers” of the Monarch Employers and the other employers identified above. Robert Lopez, George Lopez, and Eddie Audelo were involved in the day-to-day operation of the business and directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Ascencio seeks the same civil penalties against Robert Lopez on the same grounds for which he seeks civil penalties against the Monarch Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Armando Ascencio 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: Armando Ascencio

///

///

LWDA / The Monarch Employers

Re: Armando Ascencio

October 15, 2024

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Monarch Litho Inc.
Robert Lopez
c/o Agent for service of process
1501 Date Street
Montebello, CA 90640

Monarch Litho Inc.
Robert Lopez
1501 Date Street
Montebello, CA 90640

Monarch Litho Inc.
George Lopez
1501 Date Street
Montebello, CA 90640

Monarch Litho Inc.
Eddie Audelo
1501 Date Street
Montebello, CA 90640

EXHIBIT 3

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

7 Attorneys for Plaintiff(s),
8 ARMANDO ASCENCIO, and all others similarly situated

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Superior Court of California,
County of Los Angeles
10/21/2024 2:43 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By C. Vega, Deputy Clerk

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12 **(UNLIMITED JURISDICTION)**

13 ARMANDO ASCENCIO, on behalf of himself
14 and all others similarly situated, and the general
public,

15 *Plaintiff,*

16 vs.

17 MONARCH LITHO INC., a California
18 corporation, ROBERT LOPEZ, a natural
19 individual; and DOES 1–50, inclusive,

20 *Defendants.*

Case No. **24STCV27524**

CLASS ACTION

COMPLAINT FOR:

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

JURY TRIAL DEMANDED



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Los Angeles, CA 90067

1 Plaintiff, Armando Ascencio (hereafter “Plaintiff” or “Ascencio”), on behalf of himself
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. 4-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants Monarch Litho Inc., Robert Lopez,
7 and Does 1 through 50, inclusive (collectively “Defendants”).

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

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

13 (B) Provide all meal periods;

14 (C) Authorize and permit all rest breaks;

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

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

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

18 (G) Only deduct wages lawfully;

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

20 (I) 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 Armando Ascencio is a resident of California.

25 4. Defendant Monarch Litho Inc. is a corporation organized and existing under the
26 laws of California and also a citizen of California based on Plaintiff’s information and belief.

27 5. Defendant Robert Lopez is a natural person, and a citizen of California based on
28 Plaintiff’s information and belief. Defendant Lopez is the owner, Chief Executive
officer and a managing agent for Defendant Monarch Litho Inc. and the other Defendants.

6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
participation in the conduct alleged herein of Defendants sued as DOES 1-50, inclusive, but is



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1 informed and believes and thereon alleges that said Defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
3 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
4 when ascertained.

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

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

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

19 **III. CLASS ALLEGATIONS**

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

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

12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the



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right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

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

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

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

B. Whether Defendants unlawfully deducted wages from Class Members;

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

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

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

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

G. Whether Defendants willfully failed to provide the class with timely final wages;

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

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

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



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

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

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

20 **IV. STATEMENT OF FACTS**

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

25 professional, semiprofessional, managerial, supervisory, laboratory, research,
26 technical, clerical, office work, and mechanical occupations. Said occupations
27 shall include, but not be limited to, the following: accountants; agents; appraisers;
28 artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters;
canvassers; carriers; cashiers; checkers; clerks; collectors; communications and
sound technicians; compilers; copy holders; copy readers; copy writers; computer
programmers and operators; demonstrators and display representatives;
dispatchers; distributors; door-keepers; drafters; elevator operators; estimators;
editors; graphic arts technicians; guards; guides; hosts; inspectors; installers;



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instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radiotelephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations

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

20. On approximately September 15, 1999, Defendants began to employ Ascencio in Montebello in the position of hourly, non-exempt mechanic. Defendants continuously employed him in that capacity until on or about July 26, 2024 when his employment ended.

21. At all relevant times, Defendants issued wages to Ascencio and all of the other Class Members on a weekly basis and paid them by the hour. At all relevant times, Defendants classified Ascencio and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

22. At all relevant times, Defendants failed to compensate Ascencio and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Defendants required Ascencio and all of the other Class Members to work off the clock without compensation after they had already clocked out at the end of their shifts. Defendants further arbitrarily deducted several minutes from the hours Ascencio and all of the other Class Members worked and recorded and failed to pay them for all hours worked. For example, for the period of July 22, 2024 to July 28, 2024, Ascencio reported 24 hours and 37 minutes on his time records (in addition to eight (8)) hours of sick time). Defendants, however, compensated him only for 24 hours of worktime (in addition to eight (8) hours of sick time). In other words, Defendants arbitrarily deducted 37 minutes from Ascencio's hours worked and failed to compensate him for all overtime hours worked. Defendants also often called Ascencio and all of the other Class



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1 Members on their days off to discuss work related matters such as the status of the printing
2 machines without compensating them for such hours worked. Further, Defendants arbitrarily
3 deducted several minutes from Ascencio and all of the other Class Members' hours worked if
4 they arrived to work a few minutes after they scheduled start time.

5 23. As result of the off the clock work and the deducted wages discussed above,
6 Defendants also failed to compensate Ascencio and all of the other Class Members at the correct
7 rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight
8 hours of the seventh day of the workweek. Defendants also failed to compensate Ascencio and
9 all of the other Class Members at the correct rates of pay for all hours worked over 12 in a day,
and all over the first eight of the seventh day of the workweek.

10 24. At all relevant times, Defendants failed to provide Ascencio and all of the other
11 Class Members with all timely 30-minute, off-duty meal periods. Defendants understaffed their
12 shifts and failed to provide the employees with off-duty, uninterrupted, meal periods before they
13 worked more than five (5) hours in a workday. Defendants required Ascencio and all of the other
14 Class Members to monitor their personal cellphone at all times and respond to their managers'
15 calls and messages even when they tried to take a meal period. On rare occasions that Ascencio
16 and the other Class Members were able to take a meal break, it was always after they had already
17 worked more than five (5) hours and it was often interrupted and for less than 30 minutes. Further,
18 Defendants failed to provide a second meal period when the employees worked more than 10
19 hours in a workday. Defendants also failed to pay premium wages for days on which they failed
to provide Ascencio and all of the other Class Members with meal periods as required by law.

20 25. At all relevant times, Defendants failed to authorize and permit Ascencio and all
21 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
22 or major portion thereof. Defendants never scheduled rest breaks for their employees and failed
23 to provide them with a 10 minute, uninterrupted, off-duty rest break for every four (4) hours
24 worked or major fraction thereof. Further, Defendants failed to provide a third rest break when
the employees worked more than 10 hours in a workday. Defendants also failed to pay premium
25 wages for days on which they failed to authorize and permit Ascencio and all of the other Class
26 Members to take rest breaks as required by law.

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



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1 required Ascencio and all of the other Class Members to supply mobile phones to perform their
2 job duties and to communicate with the managers and supervisor. However, Defendants did not
3 provide these items and did not reimburse Ascencio and the other Class Members for these items.

4 27. As discussed above, at all relevant times, Defendants unlawfully deducted wages
5 belonging to Ascencio and all of the other Class Members.

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

14 29. At all relevant times, Defendants also failed to timely pay Ascencio and all of the
15 other Class Members all earned wages as described above during and at the conclusion of
16 employment. Defendants also failed to provide the employees with final wages until days after
17 their last day worked.

18 30. At all relevant times, Defendants failed to maintain accurate employee records of
19 Ascencio and all of the other Class Members.

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

22 A. Not provided with all off-duty, timely, uninterrupted, 30-minute meal
23 periods;

24 B. Not authorized and permitted to take all rest break periods;

25 C. Not paid one hour's pay for each workday in which Defendants failed to
26 authorize and permit them to take one or more timely rest periods;

27 D. Not paid one hour's pay for each workday in which Defendants failed to
28 provide them with one or more timely meal periods;

E. Not paid all wages earned, including, but not limited to, minimum, regular,
overtime, and doubletime wages;

F. Not indemnified for all necessary business expenditures incurred during



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1 the discharge of their duties;

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

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

5 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

15 34. 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 35. 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
25 employed more than eight (8) hours in any workday or
26 more than 40 hours in any workweek unless the employee
27 receives one and one-half (1 ½) times such employee’s
28 regular rate of pay for all hours worked over 40 hours in
the workweek. Eight (8) hours of labor constitutes a day’s
work. Employment beyond eight (8) hours in any workday
or more than six (6) days in any workweek is permissible
provided the employee is compensated for such overtime
at not less than:

(a) One and one-half (1 ½) times the employee’s



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regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

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

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

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

37. Labor Code section 510 states:

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

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

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

40. Labor Code section 1198 makes it unlawful for an employer to employ an



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1 employee under conditions that violate the Wage Order.

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

7 42. As discussed above, at all relevant times during the applicable limitations period,
8 Defendants failed to compensate Plaintiff and the Class Members for all hours worked at the
9 correct rates of pay, including, but not limited to minimum, regular, overtime and doubletime
10 wages for all minimum, regular, overtime and doubletime hours, respectively, that they worked
11 at the correct rates of pay.

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

16 44. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
17 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
18 the full amount of wages earned during each pay period during the applicable limitations period.

19 45. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class
20 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts
21 of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in
22 amounts subject to proof.

23 **B. UNLAWFUL WAGE DEDUCTIONS**

24 46. Under Labor Code § 221, "It shall be unlawful for any employer to collect or
25 receive from an employee any part of wages theretofore paid by said employer to said employee."
26 As discussed above, Defendants deducted wages from the wages earned by Ascencio and all of
27 the other Class Members in violation of Labor Code § 221.

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



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1 **C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
2 **LABOR CODE**

3 48. In relevant part, Labor Code section 558.1 states:

- 4 (a) Any employer or other person acting on behalf of an employer,
5 who violates, or causes to be violated, any provision regulating
6 minimum wages or hours and days of work in any order of the
7 Industrial Welfare Commission, or violates, or causes to be
8 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
9 held liable as the employer for such violation.
10
11 (b) For purposes of this section, the term “other person acting on
12 behalf of an employer” is limited to a natural person who is an
13 owner, director, officer, or managing agent of the employer, and
14 the term “managing agent” has the same meaning as in subdivision
15 (b) of Section 3294 of the Civil Code.

16 At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class
17 Members, and/or “owner,” “managing agent,” and/or “officer” of Defendants and the other
18 employers identified above. Robert Lopez was involved in the day-to-day operation of the
19 business and directly or indirectly, or through an agent or other person, employed and exercised
20 control over the wages, hours, and/or working conditions of the Class Members, and caused the
21 violations to the Labor Code and the Wage Order described above. On behalf of himself and all
22 of the other Class Members, Ascencio seeks an award of unpaid wages, interest, restitution,
23 statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Robert
24 Lopez that is the same as the awards he seeks against the other Defendants on the same grounds
25 for which Plaintiff seeks these awards against all Defendants.

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PROVIDE MEAL PERIODS**

28 **Lab. Code §§ 226.7 and 512**

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

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

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

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



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

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

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

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

53. 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.

54. 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



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

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

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

19 56. As discussed above, Defendants intentionally failed to provide Plaintiff and the
20 Class Members with all required timely, 30-minute duty free meal periods in accordance with the
21 Wage Order. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class
22 Members for days on which they failed to provide Plaintiff and the other Class Members their meal
23 periods.

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

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

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

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

3 60. In relevant part, Labor Code section 558.1 states:

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

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

15 At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class
16 Members, and/or “owner,” “managing agent,” and/or “officer” of Defendants and the other
17 employers identified above. Robert Lopez was involved in the day-to-day operation of the
18 business and directly or indirectly, or through an agent or other person, employed and exercised
19 control over the wages, hours, and/or working conditions of the Class Members, and caused the
20 violations to the Labor Code and the Wage Order described above. On behalf of himself and all
21 of the other Class Members, Ascencio seeks an award of unpaid wages, interest, restitution,
22 statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Robert
23 Lopez that is the same as the awards he seeks against the other Defendants on the same grounds
24 for which Plaintiff seeks these awards against all Defendants.

25 **THIRD CAUSE OF ACTION**

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

27 **Lab. Code § 226.7**

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

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

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

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



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

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

Rest Periods:

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

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

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



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period is not provided.

66. 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.

67. As discussed above, 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.

68. 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.

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

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

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

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

73. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have



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1 suffered damages in amounts subject to proof to the extent they were not paid additional wages
2 owed for all rest breaks not provided to them.

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

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

8 75. In relevant part, Labor Code section 558.1 states:

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

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

20 At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class
21 Members, and/or “owner,” “managing agent,” and/or “officer” of Defendants and the other
22 employers identified above. Robert Lopez was involved in the day-to-day operation of the
23 business and directly or indirectly, or through an agent or other person, employed and exercised
24 control over the wages, hours, and/or working conditions of the Class Members, and caused the
25 violations to the Labor Code and the Wage Order described above. On behalf of himself and all
26 of the other Class Members, Ascencio seeks an award of unpaid wages, interest, restitution,
27 statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Robert
28 Lopez that is the same as the awards he seeks against the other Defendants on the same grounds
for which Plaintiff seeks these awards against all Defendants.

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FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

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

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

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

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

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

80. As described above, Defendants required Ascencio and all of the other Class Members to incur certain business expenses in the course of performing their duties. Defendants required Ascencio and all of the other Class members to supply mobile phones to perform their job duties. However, Defendants did not provide these items and did not reimburse Ascencio and the other Class members for these items.

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

82. By reason of the above, Plaintiff and the Class Members are entitled to reimbursement for all necessary expenditures and losses and interest due and owing to within four years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the members of the Class seek reasonable attorney’s fees pursuant to Labor Code § 2802(c).

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

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

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating



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1 minimum wages or hours and days of work in any order of the
2 Industrial Welfare Commission, or violates, or causes to be
3 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
4 held liable as the employer for such violation.

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

10 At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class
11 Members, and/or “owner,” “managing agent,” and/or “officer” of Defendants and the other
12 employers identified above. Robert Lopez was involved in the day-to-day operation of the
13 business and directly or indirectly, or through an agent or other person, employed and exercised
14 control over the wages, hours, and/or working conditions of the Class Members, and caused the
15 violations to the Labor Code and the Wage Order described above. On behalf of himself and all
16 of the other Class Members, Ascencio seeks an award of unpaid wages, unreimbursed expenses,
17 interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related
18 relief against Robert Lopez that is the same as the awards he seeks against the other Defendants
19 on the same grounds for which Plaintiff seeks these awards against all Defendants.

20 **FIFTH CAUSE OF ACTION**

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

22 **Lab. Code §§ 226 and 226.2**

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

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

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

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

A. Gross wages earned;

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



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

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

5 E. Net wages earned;

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

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

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

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

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

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

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

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

27 D. The name of the employee and only the last four digits of his or her
28 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.

87. “Promptly and easily determine,” as stated in California Labor Code § 226(e),



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1 means a reasonable person would be able to readily ascertain the information without reference
2 to other documents or information.

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

17 89. Defendants' failure to provide Plaintiff and the other Class Members with accurate
18 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
19 the other Class Members with accurate wage statements but intentionally provided wage
20 statements that Defendants knew were not accurate.

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

91. Pursuant to California Labor Code § 226(e), Plaintiff and the class are entitled to



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1 recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period
2 in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for
3 each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an
4 aggregate penalty of four thousand dollars (\$4,000) per class member, and are also entitled to
an award of costs and reasonable attorneys' fees.

5 **B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
6 **LABOR CODE**

7 92. In relevant part, Labor Code section 558.1 states:

- 8
- 9 (a) Any employer or other person acting on behalf of an employer,
10 who violates, or causes to be violated, any provision regulating
11 minimum wages or hours and days of work in any order of the
12 Industrial Welfare Commission, or violates, or causes to be
violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
held liable as the employer for such violation.
- 13 (b) For purposes of this section, the term "other person acting on
14 behalf of an employer" is limited to a natural person who is an
15 owner, director, officer, or managing agent of the employer, and
the term "managing agent" has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.

16 At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class
17 Members, and/or "owner," "managing agent," and/or "officer" of Defendants and the other
18 employers identified above. Robert Lopez was involved in the day-to-day operation of the
19 business and directly or indirectly, or through an agent or other person, employed and exercised
20 control over the wages, hours, and/or working conditions of the Class Members, and caused the
21 violations to the Labor Code and the Wage Order described above. On behalf of himself and all
22 of the other Class Members, Ascencio seeks an award of unpaid wages, interest, restitution,
23 statutory penalties, liquidated damages, attorneys' fees, costs, and related relief against Robert
Lopez that is the same as the awards he seeks against the other Defendants on the same grounds
for which Plaintiff seeks these awards against all Defendants.

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SIXTH CAUSE OF ACTION
WILLFUL FAILURE TO TIMELY PAY FINAL WAGES
(Lab. Code §§ 201, 202, and 203)

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

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

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

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

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

97. Defendants failed to pay Ascencio and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Ascencio, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and related compensation. Additionally, Defendants failed to issue to Ascencio and all of the other Class members whose employment ended their final paychecks until several days after their termination.

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

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

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



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penalties for each Class Member.

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

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

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of Defendants and the other employers identified above. Robert Lopez was involved in the day-to-day operation of the business and directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Ascencio seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Robert Lopez that is the same as the awards he seeks against the other Defendants on the same grounds for which Plaintiff seeks these awards against all Defendants.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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



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

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

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

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

V. PRAYER FOR RELIEF

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

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

B. An order that Plaintiff be appointed class representative;

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

D. Unpaid wages, including minimum, regular, overtime, double-time, missed meal period, and missed rest period wages;

E. Liquidated damages;

F. Statutory penalties, including waiting time penalties;

G. Restitution;

H. Declaratory relief;

I. Actual damages;



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- 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 himself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: October 21, 2024

By: 

DAVID G. SPIVAK, Attorney for
Plaintiff, ARMANDO ASCENCIO, and
all others similarly situated



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EXHIBIT 4

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Attorneys for Plaintiff(s),
ARMANDO ASCENCIO, and all others similarly situated

FILED
Superior Court of California
County of Los Angeles
12/19/2024

David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

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

ARMANDO ASCENCIO, on behalf of himself
and all others similarly situated, and the general
public, and as "Aggrieved Employees" on behalf
of other "Aggrieved Employees" and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

MONARCH LITHO INC., a California
corporation, ROBERT LOPEZ, a natural
individual; and DOES 1–50, inclusive,

Defendants.

Case No.: 24STCV27524

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

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

JURY TRIAL DEMANDED



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1 Plaintiff, Armando Ascencio (hereafter “Plaintiff” or “Ascencio”), on behalf of himself
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 and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Monarch Litho
9 Inc., Robert Lopez, and Does 1 through 50, inclusive (collectively “Defendants”).

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

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

15 (B) Provide all meal periods;

16 (C) Authorize and permit all rest breaks;

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

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

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

20 (G) Only deduct wages lawfully;

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

22 (I) 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 Armando Ascencio is a resident of California. At all relevant times,
28 Plaintiff was an “employees” within the meaning of Title 8 California Code of Regulations



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1 Section 11040, and an “aggrieved employee” within the meaning of California Labor Code
2 § 2699(c).

3 3. Defendant Monarch Litho Inc. is a corporation organized and existing under the
4 laws of California and also a citizen of California based on Plaintiff’s information and belief.

5 4. Defendant Robert Lopez is a natural person, and a citizen of California based on
6 Plaintiff’s information and belief. Defendant Lopez is the owner, Chief Executive
7 officer and a managing agent for Defendant Monarch Litho Inc. and the other Defendants.

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

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

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

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

28 ///



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III. CLASS ALLEGATIONS

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

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

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

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

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

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

B. Whether Defendants unlawfully deducted wages from Class Members;

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



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1 D. Whether Defendants failed to authorize and permit the Class Members to
2 take all rest periods in compliance with California law;

3 E. Whether Defendants failed to indemnify the Class Members for the
4 reasonable expenses they incurred during the course of performing their duties;

5 F. Whether Defendants knowingly and intentionally failed to provide the
6 class with accurate and complete itemized wage statements;

7 G. Whether Defendants willfully failed to provide the class with timely final
8 wages;

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

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

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

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

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

26 17. **Superiority:** A class action is vastly superior to other available means for fair and
27 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
28 Court. Class action treatment will allow a number of similarly situated persons to simultaneously



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1 and efficiently prosecute their common claims in a single forum without the unnecessary
2 duplication of effort and expense that numerous individual actions would entail. In addition, the
3 monetary amounts due to many individual Class Members are likely to be relatively small and
4 would thus make it difficult, if not impossible, for individual Class Members to both seek and
5 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
6 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
7 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

8 **IV. STATEMENT OF FACTS**

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

13 professional, semiprofessional, managerial, supervisory, laboratory, research,
14 technical, clerical, office work, and mechanical occupations. Said occupations
15 shall include, but not be limited to, the following: accountants; agents; appraisers;
16 artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters;
17 canvassers; carriers; cashiers; checkers; clerks; collectors; communications and
18 sound technicians; compilers; copy holders; copy readers; copy writers; computer
19 programmers and operators; demonstrators and display representatives;
20 dispatchers; distributors; door-keepers; drafters; elevator operators; estimators;
21 editors; graphic arts technicians; guards; guides; hosts; inspectors; installers;
22 instructors; interviewers; investigators; librarians; laboratory workers; machine
23 operators; mechanics; mailers; messengers; medical and dental technicians and
24 technologists; models; nurses; packagers; photographers; porters and cleaners;
process servers; printers; proof readers; salespersons and sales agents; secretaries;
sign erectors; sign painters; social workers; solicitors; statisticians; stenographers;
teachers; telephone, radiotelephone, telegraph and call-out operators; tellers;
ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants
and other related occupations listed as professional, semiprofessional, technical,
clerical, mechanical, and kindred occupations

25 Wage Order, § 2(O). At all relevant times during the applicable limitations period, Defendants,
26 Ascencio, and all of the Class Members were covered by the Wage Order because Ascencio and
27 all of the Class Members worked for Defendants as printers, their assistants and other related
28 occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred



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1 occupations. Accordingly, Ascencio and all of the other Class Members are entitled to the
2 protections the Wage Order provides.

3 19. On approximately September 15, 1999, Defendants began to employ Ascencio in
4 Montebello in the position of hourly, non-exempt mechanic. Defendants continuously employed
5 him in that capacity until on or about July 26, 2024 when his employment ended.

6 20. At all relevant times, Defendants issued wages to Ascencio and all of the other
7 Class Members on a weekly basis and paid them by the hour. At all relevant times, Defendants
8 classified Ascencio and all of the other Class Members as non-exempt employees entitled to the
9 protections of the Labor Code and the Wage Order.

10 21. At all relevant times, Defendants failed to compensate Ascencio and all of the
11 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
12 Defendants required Ascencio and all of the other Class Members to work off the clock without
13 compensation after they had already clocked out at the end of their shifts. Defendants further
14 arbitrarily deducted several minutes from the hours Ascencio and all of the other Class Members
15 worked and recorded and failed to pay them for all hours worked. For example, for the period of
16 July 22, 2024 to July 28, 2024, Ascencio reported 24 hours and 37 minutes on his time records
17 (in addition to eight (8)) hours of sick time). Defendants, however, compensated him only for 24
18 hours of worktime (in addition to eight (8) hours of sick time). In other words, Defendants
19 arbitrarily deducted 37 minutes from Ascencio's hours worked and failed to compensate him for
20 all overtime hours worked. Defendants also often called Ascencio and all of the other Class
21 Members on their days off to discuss work related matters such as the status of the printing
22 machines without compensating them for such hours worked. Further, Defendants arbitrarily
23 deducted several minutes from Ascencio and all of the other Class Members' hours worked if
24 they arrived to work a few minutes after they scheduled start time.

25 22. As result of the off the clock work and the deducted wages discussed above,
26 Defendants also failed to compensate Ascencio and all of the other Class Members at the correct
27 rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight
28 hours of the seventh day of the workweek. Defendants also failed to compensate Ascencio and



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1 all of the other Class Members at the correct rates of pay for all hours worked over 12 in a day,
2 and all over the first eight of the seventh day of the workweek.

3 23. At all relevant times, Defendants failed to provide Ascencio and all of the other
4 Class Members with all timely 30-minute, off-duty meal periods. Defendants understaffed their
5 shifts and failed to provide the employees with off-duty, uninterrupted, meal periods before they
6 worked more than five (5) hours in a workday. Defendants required Ascencio and all of the other
7 Class Members to monitor their personal cellphone at all times and respond to their managers'
8 calls and messages even when they tried to take a meal period. On rare occasions that Ascencio
9 and the other Class Members were able to take a meal break, it was always after they had already
10 worked more than five (5) hours and it was often interrupted and for less than 30 minutes. Further,
11 Defendants failed to provide a second meal period when the employees worked more than 10
12 hours in a workday. Defendants also failed to pay premium wages for days on which they failed
13 to provide Ascencio and all of the other Class Members with meal periods as required by law.

14 24. At all relevant times, Defendants failed to authorize and permit Ascencio and all
15 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
16 or major portion thereof. Defendants never scheduled rest breaks for their employees and failed
17 to provide them with a 10 minute, uninterrupted, off-duty rest break for every four (4) hours
18 worked or major fraction thereof. Further, Defendants failed to provide a third rest break when
19 the employees worked more than 10 hours in a workday. Defendants also failed to pay premium
20 wages for days on which they failed to authorize and permit Ascencio and all of the other Class
21 Members to take rest breaks as required by law.

22 25. At all relevant times, Defendants required Ascencio and all of the other Class
23 Members to incur certain business expenses in the course of performing their duties. Defendants
24 required Ascencio and all of the other Class Members to supply mobile phones to perform their
25 job duties and to communicate with the managers and supervisor. However, Defendants did not
26 provide these items and did not reimburse Ascencio and the other Class Members for these items.

27 26. As discussed above, at all relevant times, Defendants unlawfully deducted wages
28 belonging to Ascencio and all of the other Class Members.



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1 27. At all relevant times, Defendants failed to issue to Ascencio and all of the other
2 Class Members complete and accurate wage statements that state all hours worked at the correct
3 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
4 wage statements they issued to Ascencio and all of the other Class Members the unpaid wages
5 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
6 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages
7 earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned,
8 net wages earned, all hours work at each rate of pay, and related information.

9 28. At all relevant times, Defendants also failed to timely pay Ascencio and all of the
10 other Class Members all earned wages as described above during and at the conclusion of
11 employment. Defendants also failed to provide the employees with final wages until days after
12 their last day worked.

13 29. At all relevant times, Defendants failed to maintain accurate employee records of
14 Ascencio and all of the other Class Members.

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

17 A. Not provided with all off-duty, timely, uninterrupted, 30-minute meal
18 periods;

19 B. Not authorized and permitted to take all rest break periods;

20 C. Not paid one hour's pay for each workday in which Defendants failed to
21 authorize and permit them to take one or more timely rest periods;

22 D. Not paid one hour's pay for each workday in which Defendants failed to
23 provide them with one or more timely meal periods;

24 E. Not paid all wages earned, including, but not limited to, minimum, regular,
25 overtime, and doubletime wages;

26 F. Unlawfully deducted wages belonging to Plaintiff and the Class Members;

27 G. Not indemnified for all necessary business expenditures incurred during
28 the discharge of their duties;



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- 1 H. Not provided with accurate and complete wage statements;
2 I. Failed to maintain accurate employment records; and
3 J. Not timely paid all earned and unpaid wages at the time their employment
4 ended.

5 **FIRST CAUSE OF ACTION**
6 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
7 **CORRECT RATES**

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

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

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

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

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

15 33. 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 34. 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
25 employed more than eight (8) hours in any workday or
26 more than 40 hours in any workweek unless the employee
27 receives one and one-half (1 ½) times such employee’s
28 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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- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

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

36. 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.

37. 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.

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

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

8 41. As discussed above, at all relevant times during the applicable limitations period,
9 Defendants failed to compensate Plaintiff and the Class Members for all hours worked at the
10 correct rates of pay, including, but not limited to minimum, regular, overtime and doubletime
11 wages for all minimum, regular, overtime and doubletime hours, respectively, that they worked
12 at the correct rates of pay.

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

17 43. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
18 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
19 the full amount of wages earned during each pay period during the applicable limitations period.

20 44. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class
21 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts
22 of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in
23 amounts subject to proof.

24 **B. UNLAWFUL WAGE DEDUCTIONS**

25 45. Under Labor Code § 221, "It shall be unlawful for any employer to collect or
26 receive from an employee any part of wages theretofore paid by said employer to said employee."
27 As discussed above, Defendants deducted wages from the wages earned by Ascencio and all of
28 the other Class Members in violation of Labor Code § 221.



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1 46. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
2 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
3 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
4 law.

5 **C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
6 **LABOR CODE**

7 47. In relevant part, Labor Code section 558.1 states:

- 8 (a) Any employer or other person acting on behalf of an employer,
9 who violates, or causes to be violated, any provision regulating
10 minimum wages or hours and days of work in any order of the
11 Industrial Welfare Commission, or violates, or causes to be
12 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
13 held liable as the employer for such violation.
- 14 (b) For purposes of this section, the term "other person acting on
15 behalf of an employer" is limited to a natural person who is an
16 owner, director, officer, or managing agent of the employer, and
17 the term "managing agent" has the same meaning as in subdivision
18 (b) of Section 3294 of the Civil Code.

16 At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class
17 Members, and/or "owner," "managing agent," and/or "officer" of Defendants and the other
18 employers identified above. Robert Lopez was involved in the day-to-day operation of the
19 business and directly or indirectly, or through an agent or other person, employed and exercised
20 control over the wages, hours, and/or working conditions of the Class Members, and caused the
21 violations to the Labor Code and the Wage Order described above. On behalf of himself and all
22 of the other Class Members, Ascencio seeks an award of unpaid wages, interest, restitution,
23 statutory penalties, liquidated damages, attorneys' fees, costs, and related relief against Robert
24 Lopez that is the same as the awards he seeks against the other Defendants on the same grounds
25 for which Plaintiff seeks these awards against all Defendants.

26 ///

27 ///

28 ///



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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

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

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

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

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

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

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

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

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

52. 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



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1 employee is relieved of all duty during a 30 minute meal period,
2 the meal period shall be considered an “on duty” meal period and
counted as time worked. . . .

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

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

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

- 12 (c) If an employer fails to provide an employee a meal period
13 or rest period in accordance with a state law, including, but
14 not limited to, an applicable statute or applicable
15 regulation, standard, or order of the Industrial Welfare
16 Commission, the Occupational Safety and Health
17 Standards Board, or the Division of Occupational Safety
18 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.

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

23 55. As discussed above, Defendants intentionally failed to provide Plaintiff and the
24 Class Members with all required timely, 30-minute duty free meal periods in accordance with the
25 Wage Order. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class
26 Members for days on which they failed to provide Plaintiff and the other Class Members their meal
27 periods.
28



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

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

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

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

13 59. In relevant part, Labor Code section 558.1 states:

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

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

25 At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class
26 Members, and/or "owner," "managing agent," and/or "officer" of Defendants and the other
27 employers identified above. Robert Lopez was involved in the day-to-day operation of the
28 business and directly or indirectly, or through an agent or other person, employed and exercised
control over the wages, hours, and/or working conditions of the Class Members, and caused the
violations to the Labor Code and the Wage Order described above. On behalf of himself and all
of the other Class Members, Ascencio seeks an award of unpaid wages, interest, restitution,



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1 statutory penalties, liquidated damages, attorneys' fees, costs, and related relief against Robert
2 Lopez that is the same as the awards he seeks against the other Defendants on the same grounds
3 for which Plaintiff seeks these awards against all Defendants.

4 **THIRD CAUSE OF ACTION**

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

6 **Lab. Code § 226.7**

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

8 60. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

12 62. In relevant part, California Labor Code § 1198 states:

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

18 63. In relevant part, Section 12 of the Wage Order states:

19 Rest Periods:

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



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

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

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

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

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

24 67. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class
25 Members for days on which they failed to authorize and permit Plaintiff and the other Class
26 Members to take timely rest periods.

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

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



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1 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
2 take all rest breaks required by California law.

3 70. Defendants failed to provide Plaintiff with all required rest breaks in accordance
4 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
6 which resulted in Defendants not providing the Class Members with all rest breaks required by
7 California law.

8 71. Defendants failed to pay Plaintiff the additional wages required by California
9 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
10 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
11 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
12 Class Members with additional wages for all rest breaks not provided to them as required by
13 California Labor Code § 226.7.

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

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

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

22 74. In relevant part, Labor Code section 558.1 states:

- 23 (a) Any employer or other person acting on behalf of an employer,
24 who violates, or causes to be violated, any provision regulating
25 minimum wages or hours and days of work in any order of the
26 Industrial Welfare Commission, or violates, or causes to be
27 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
28 held liable as the employer for such violation.
- (b) For purposes of this section, the term "other person acting on
behalf of an employer" is limited to a natural person who is an
owner, director, officer, or managing agent of the employer, and



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the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of Defendants and the other employers identified above. Robert Lopez was involved in the day-to-day operation of the business and directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Ascencio seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Robert Lopez that is the same as the awards he seeks against the other Defendants on the same grounds for which Plaintiff seeks these awards against all Defendants.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

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

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

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

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

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

79. As described above, Defendants required Ascencio and all of the other Class Members to incur certain business expenses in the course of performing their duties. Defendants required Ascencio and all of the other Class members to supply mobile phones to perform their job duties. However, Defendants did not provide these items and did not reimburse Ascencio and the other Class members for these items.



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1 80. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
2 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
3 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
4 during the course of performing their duties.

5 81. By reason of the above, Plaintiff and the Class Members are entitled to
6 reimbursement for all necessary expenditures and losses and interest due and owing to within four
7 years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to
8 California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the members of the
9 Class seek reasonable attorney's fees pursuant to Labor Code § 2802(c).

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

12 82. In relevant part, Labor Code section 558.1 states:

- 13 (a) Any employer or other person acting on behalf of an employer,
14 who violates, or causes to be violated, any provision regulating
15 minimum wages or hours and days of work in any order of the
16 Industrial Welfare Commission, or violates, or causes to be
17 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
18 held liable as the employer for such violation.
- 19 (b) For purposes of this section, the term "other person acting on
20 behalf of an employer" is limited to a natural person who is an
21 owner, director, officer, or managing agent of the employer, and
22 the term "managing agent" has the same meaning as in subdivision
23 (b) of Section 3294 of the Civil Code.

24 At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class
25 Members, and/or "owner," "managing agent," and/or "officer" of Defendants and the other
26 employers identified above. Robert Lopez was involved in the day-to-day operation of the
27 business and directly or indirectly, or through an agent or other person, employed and exercised
28 control over the wages, hours, and/or working conditions of the Class Members, and caused the
violations to the Labor Code and the Wage Order described above. On behalf of himself and all
of the other Class Members, Ascencio seeks an award of unpaid wages, unreimbursed expenses,
interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related



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1 relief against Robert Lopez that is the same as the awards he seeks against the other Defendants
2 on the same grounds for which Plaintiff seeks these awards against all Defendants.

3 **FIFTH CAUSE OF ACTION**

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

5 **Lab. Code §§ 226 and 226.2**

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

7 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
8 **STATEMENTS**

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

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

13 A. Gross wages earned;

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

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

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

21 E. Net wages earned;

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

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

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

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



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1 85. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
2 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
3 the employer fails to provide accurate and complete information as required by California Labor
4 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
5 alone one or more of the following:

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

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

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

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

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

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

21 87. As alleged herein, at all relevant times during the applicable limitations period,
22 Defendants violated California Labor Code section 226 because they did not properly and
23 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
24 the corresponding number of hours worked at each rate by the employee and other requirements
25 of California Labor Code section 226. Defendants failed to state in the wage statements they
26 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
27 including, but not limited to, regular and overtime wages for work they performed off-the-clock
28 after clocking-out (as described above). Defendants knowingly and intentionally did not issue



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1 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
2 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
3 Members that state all minimum wages earned, all regular wages earned, all overtime wages
4 earned, all doubletime wages earned, all meal period premium wages earned, all rest break
5 premium wages earned, all unlawfully deducted wages, gross wages earned, net wages earned,
6 all hours work at each rate of pay, and related information.

7 88. Defendants' failure to provide Plaintiff and the other Class Members with accurate
8 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
9 the other Class Members with accurate wage statements but intentionally provided wage
10 statements that Defendants knew were not accurate.

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

21 90. Pursuant to California Labor Code § 226(e), Plaintiff and the class are entitled to
22 recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period
23 in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for
24 each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an
25 aggregate penalty of four thousand dollars (\$4,000) per class member, and are also entitled to
26 an award of costs and reasonable attorneys' fees.

27 **B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
28 **LABOR CODE**

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



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- 1 (a) Any employer or other person acting on behalf of an employer,
2 who violates, or causes to be violated, any provision regulating
3 minimum wages or hours and days of work in any order of the
4 Industrial Welfare Commission, or violates, or causes to be
5 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
6 held liable as the employer for such violation.
7
8 (b) For purposes of this section, the term “other person acting on
9 behalf of an employer” is limited to a natural person who is an
10 owner, director, officer, or managing agent of the employer, and
11 the term “managing agent” has the same meaning as in subdivision
12 (b) of Section 3294 of the Civil Code.

13 At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class
14 Members, and/or “owner,” “managing agent,” and/or “officer” of Defendants and the other
15 employers identified above. Robert Lopez was involved in the day-to-day operation of the
16 business and directly or indirectly, or through an agent or other person, employed and exercised
17 control over the wages, hours, and/or working conditions of the Class Members, and caused the
18 violations to the Labor Code and the Wage Order described above. On behalf of himself and all
19 of the other Class Members, Ascencio seeks an award of unpaid wages, interest, restitution,
20 statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Robert
21 Lopez that is the same as the awards he seeks against the other Defendants on the same grounds
22 for which Plaintiff seeks these awards against all Defendants.

23 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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



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

5 96. Defendants failed to pay Ascencio and all of the other Class Members whose
6 employment ended all of the earned but unpaid wages described above by the conclusion of their
7 employment with Ascencio, including minimum wages, regular wages, overtime wages,
8 doubletime wages, unprovided meal period premium wages, unprovided rest break premium
9 wages, deducted wages, and related compensation. Additionally, Defendants failed to issue to
10 Ascencio and all of the other Class members whose employment ended their final paychecks until
11 several days after their termination.

12 97. By failing to pay such earned wages to Plaintiff and the Class Members,
13 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
14 § 201 or § 202.

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

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

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

25 100. In relevant part, Labor Code section 558.1 states:

- 26 (a) Any employer or other person acting on behalf of an employer,
27 who violates, or causes to be violated, any provision regulating
28 minimum wages or hours and days of work in any order of the
Industrial Welfare Commission, or violates, or causes to be
violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be



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held liable as the employer for such violation.

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

At all relevant times, Robert Lopez was an employer of Ascencio and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of Defendants and the other employers identified above. Robert Lopez was involved in the day-to-day operation of the business and directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Ascencio seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Robert Lopez that is the same as the awards he seeks against the other Defendants on the same grounds for which Plaintiff seeks these awards against all Defendants.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

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



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

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

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

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab Code §§2698, *et seq.*)

(By Plaintiff and the Aggrieved Employees against all Defendants)

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

108. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning October 15, 2023 and ending on the date that final judgment is entered in this action.

109. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in



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1 excess of the normal work period during the current pay period are itemized as
2 corrections on the paystub for the next regular pay period. Any corrections set out
3 in a subsequently issued paystub shall state the inclusive dates of the pay period
4 for which the employer is correcting its initial report of hours worked.

5 (c) However, when employees are covered by a collective bargaining
6 agreement that provides different pay arrangements, those arrangements shall
7 apply to the covered employees.

8 (d) The requirements of this section shall be deemed satisfied by the payment
9 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
10 more than seven calendar days following the close of the payroll period.

11 110. Defendants paid wages to employees on regular intervals. Defendants, however,
12 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
13 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
14 intervals for all wages earned and all hours worked.

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

16 Every person employing labor in this state shall

17 ...

18 (c) Keep a record showing the names and addresses of all employees
19 employed and the ages of all minors.

20 (d) Keep, at a central location in the state or at the plants or
21 establishments at which employees are employed, payroll records
22 showing the hours worked daily by and the wages paid to, and the number
23 of piece-rate units earned by and any applicable piece rate paid to,
24 employees employed at the respective plants or establishments. These
25 records shall be kept in accordance with rules established for this purpose
26 by the commission, but in any case shall be kept on file for not less than
27 three years. An employer shall not prohibit an employee from maintaining
28 a personal record of hours worked, or, if paid on a piece-rate basis, piece-
rate units earned.

29 112. 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).



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113. Section 7 of Wage Order states,

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

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

114. Defendants failed to compensate Plaintiff and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, and all rest break premium wages earned. As a result, Defendants have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Plaintiff and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

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

116. During the applicable time period, Defendants violated California Labor Code §§

201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

117. 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.

118. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), twenty-five dollars (\$25) for each aggrieved employee per pay period for violation of paragraphs (1) to (7), inclusive, or paragraph (9) of subdivision (a) of Section 226 if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226. If the alleged violation is a violation of paragraph (8) of subdivision (a) of Section 226, the civil penalty applicable under this part for the violation is twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer (penalty amounts established by California Labor Code § 2699(f)(2)).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred



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1 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
2 (regardless of whether the initial violations were intentionally committed) (penalty amounts
3 established by California Labor Code § 1197.1).

4 E. For violations of California Labor Code § 1174, \$500 for Each Aggrieved
5 employee for each violation of Labor Code section 1174 (penalties set by Labor Code
6 section 1174.5).

7 F. For violations of California Labor Code § 221, one hundred dollars
8 (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred
9 dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation
10 (penalty amounts established by California Labor Code § 225.5).

11 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
12 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period.
13 The civil penalty is two hundred dollars (\$200) for each aggrieved employee per pay period if
14 either of the following are met: (i) Within the five years preceding the alleged violation, the
15 agency or any court issued a finding or determination to the employer that its policy or practice
16 giving rise to the violation was unlawful or (ii) The court determines that the employer's conduct
17 giving rise to the violation was malicious, fraudulent, or oppressive (penalty amounts established
18 by California Labor Code § 2699(f)(2)).

19 119. Plaintiff has complied with the procedures for bringing suit specified in California
20 Labor Code § 2699.3. By a letter dated October 15, 2024, Plaintiff filed a written notice online
21 with the Labor and Workforce Development Agency ("LWDA") and gave written notice by
22 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
23 have been violated, including the facts and theories to support the alleged violations. A true and
24 correct copy of the notice to the LWDA is attached as Exhibit A. Plaintiff accompanied his
25 LWDA notice with a fee in the amount of \$75.00 each. The LWDA has failed to take action in
26 response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipate that the
27 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate
28 these allegations.



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

V. PRAYER FOR RELIEF

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

- A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages, including minimum, regular, overtime, double-time, missed meal period, and missed rest period wages;
- E. Liquidated damages;
- F. Statutory penalties, including waiting time penalties;
- G. Civil penalties;
- H. Restitution;
- I. Declaratory relief;
- J. Actual damages;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

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Respectfully submitted,

Dated: December 19, 2024

David Spivak

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EXHIBIT A



THE SPIVAK LAW FIRM

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SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

October 15, 2024

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

Re: Armando Ascencio / Monarch Litho Inc.

To Whom It May Concern:

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

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

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Statement of Facts

On approximately September 15, 1999, the Monarch Employers began to employ Ascencio in Montebello in the position of hourly, non-exempt mechanic. The Monarch Employers continuously employed him in that capacity until on or about July 26, 2024 when his employment ended.

At all relevant times, the Monarch Employers issued wages to Ascencio and all of the other Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times, the Monarch Employers classified Ascencio and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Monarch Employers failed to compensate Ascencio and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Monarch Employers required Ascencio and all of the other Aggrieved Employees to work off the clock without compensation after they had already clocked out at the end of their shifts. The Monarch Employers further arbitrarily deducted several minutes from the hours Ascencio and all of the other Aggrieved Employees worked and recorded and failed to pay them for all hours worked. For example, for the period of July 22, 2024 to July 28, 2024, Ascencio reported 24 hours and 37 minutes on his time records (in addition to eight (8) hours of sick time). The Monarch Employers, however, compensated him only for 24 hours of worktime (in additional to eight (8) hours of sick time). In other words, the Monarch Employers arbitrarily deducted 37 minutes from Ascencio's hours worked and failed to compensate him for all overtime hours worked. The Monarch Employers also often called Ascencio and all of the other Aggrieved Employees on their days off to discuss work related matters such as the status of the printing machines without compensating them for such hours worked. Further, The Monarch Employers arbitrarily deducted several minutes from Ascencio and all of the other Aggrieved Employees' hours worked if they arrived to work a few minutes after they scheduled start time.

As result of the off the clock work and the deducted wages discussed above, the Monarch Employers also failed to compensate Ascencio 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 Monarch Employers also failed to compensate Ascencio and all of the other Aggrieved

Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek.

At all relevant times, the Monarch Employers failed to provide Ascencio and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Monarch understaffed its shifts and failed to provide the employees with off-duty, uninterrupted, meal periods before they worked more than five (5) hours in a workday. The Monarch Employers required Ascencio and all of the other Aggrieved Employees to monitor their personal cellphone at all times and respond to their managers' calls and messages even when they tried to take a meal period. On rare occasions that Ascencio and the other Aggrieved Employees were able to take a meal break, it was always after they had already worked more than five (5) hours and it was often interrupted and for less than 30 minutes. Further, Monarch failed to provide a second meal period when the employees worked more than 10 hours in a workday. The Monarch Employers also failed to pay premium wages for days on which they failed to provide Ascencio and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Monarch Employers failed to authorize and permit Ascencio and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Monarch never scheduled rest breaks for its employees and failed to provide them with a 10 minute, uninterrupted, off-duty rest break for every four (4) hours worked or major fraction thereof. Further, Monarch failed to provide a third rest break when the employees worked more than 10 hours in a workday. The Monarch Employers also failed to pay premium wages for days on which they failed to authorize and permit Ascencio and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Monarch Employers required Ascencio and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Monarch Employers required Ascencio and all of the other Aggrieved Employees to supply mobile phones to perform their job duties and to communicate with the managers and supervisor. However, the Monarch Employers did not provide these items and did not reimburse Ascencio and the other Aggrieved Employees for their cellphone expenses.

As discussed above, the Monarch Employers unlawfully deducted wages belonging to Ascencio and all of the other Aggrieved Employees.

At all relevant times, the Monarch Employers failed to issue to Ascencio 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 Monarch Employers knowingly and intentionally failed to state on the wage statements they issued to Ascencio 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, all unlawfully deducted wages, gross wages earned, net wages earned, all hours work at each rate of pay, and other required information.

The Monarch Employers also failed to timely pay Ascencio and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Monarch also failed to provide the employees with their final wages until days after their last day worked.

The Monarch Employers failed to maintain accurate employee records of Ascencio and all of the other Aggrieved Employees.

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

- (a) The Monarch Employers failed to pay Ascencio and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Monarch Employers failed to provide Ascencio and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Monarch Employers failed to authorize and permit Ascencio and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Monarch Employers failed to compensate Ascencio and all of the other Aggrieved Employees at one hour's pay for each day in which the Monarch Employers failed to provide them with one or more meal periods as required by law;

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

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

The Wage Order

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

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

occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; door-keepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radiotelephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations

Wage Order, § 2(O). At all relevant times during the applicable limitations period, the Monarch Employers, Ascencio, and all of the Aggrieved Employees were covered by the Wage Order because the Monarch Employers operated, and Ascencio, and all of the Aggrieved Employees, worked for the Monarch Employers as printers, their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Ascencio 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.

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

- 1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
- 2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods

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

In addition, Labor Code section 226.7 states:

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

As discussed above, at all relevant times, the Monarch Employers failed to provide Ascencio and all of the other Aggrieved Employees with all timely, off-duty, 30 minute

meal periods. Further, Monarch failed to provide a second meal period when the employees worked more than 10 hours in a workday. Furthermore, the Monarch Employers failed to pay premium wages for days on which they failed to provide Ascencio and all of the other Aggrieved Employees with timely meal periods. Accordingly, Ascencio now seeks civil penalties for these Labor Code violations that the Monarch Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

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

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

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

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

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

Additionally, the Wage Order states,

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

required by the trade or craft.

Wage Order, § 9(B).

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

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

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

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As discussed above, the Monarch Employers deducted wages from the wages earned by Ascencio and all of the other Aggrieved Employees in violation of Labor Code § 221. Accordingly, Ascencio seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

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

At all relevant times during the applicable limitations period, the Monarch 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 Monarch Employers failed to state in the wage statements they issued to Ascencio 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 (as described above). The Monarch Employers knowingly and intentionally failed to state on the wage statements they issued to Ascencio 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 doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, net wages earned, all hours work at each rate of pay, and other required information.

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

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

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

The Monarch Employers failed to compensate Ascencio and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and other compensation, at the intervals stated above. As a result, the Monarch Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly,

Ascencio now seeks civil penalties for the Labor Code violations that the Monarch Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

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

The Monarch Employers failed to pay Ascencio 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 Ascencio, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and other compensation. Additionally, the Monarch Employers failed to issue to Ascencio and all of the other Aggrieved Employees whose employment ended their final paychecks until days after the termination. By failing to pay Ascencio and all of the other Aggrieved Employees as set forth above at the end of employment, the Monarch Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of

himself and all of the other Aggrieved Employees, Ascencio seeks civil penalties from the Monarch Employers as follows:

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

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer

shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

be provided to employees. An accurate production record shall be maintained by the employer.

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

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

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

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

In relevant part, Labor Code section 558.1 states:

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

LWDA / The Monarch Employers

Re: Armando Ascencio

October 15, 2024

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

At all relevant times, Robert Lopez, George Lopez, and Eddie Audelo were the employers of Ascencio and all of the other Aggrieved Employees, and/or “owners,” “managing agents,” and/or “officers” of the Monarch Employers and the other employers identified above. Robert Lopez, George Lopez, and Eddie Audelo were involved in the day-to-day operation of the business and directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Ascencio seeks the same civil penalties against Robert Lopez on the same grounds for which he seeks civil penalties against the Monarch Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Armando Ascencio 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: Armando Ascencio

///

///

LWDA / The Monarch Employers

Re: Armando Ascencio

October 15, 2024

Page 22 of 22

Monarch Litho Inc.
Robert Lopez
c/o Agent for service of process
1501 Date Street
Montebello, CA 90640

Monarch Litho Inc.
Robert Lopez
1501 Date Street
Montebello, CA 90640

Monarch Litho Inc.
George Lopez
1501 Date Street
Montebello, CA 90640

Monarch Litho Inc.
Eddie Audelo
1501 Date Street
Montebello, CA 90640

State of California,
County of Los Angeles

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

Alfred J. Landegger, Esq.
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EXECUTED on Thursday, December 19, 2024, at Tarzana, California.

____ (Federal) I declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.

Proof of Service

EXHIBIT 5



Sample size calculator

What margin of error can you accept?

5% is a common choice

%

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

Lower margin of error requires a larger sample size.

What confidence level do you need?

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

%

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

Higher confidence level requires a larger sample size.

What is the population size?

If you don't know, use 20000

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

What is the response distribution?

Leave this as 50%

%

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

Your recommended sample size is

377

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

Online surveys with [Vovici](#) have completion rates of 66%!

Alternate scenarios

With a sample size of	100	200	300	With a confidence level of	90	95	99
Your margin of error would be	9.78%	6.89%	5.62%	Your sample size would need to be	267	377	643

Save effort, save time. [Conduct your survey online with Vovici.](#)

More information

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

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

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

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

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

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

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

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

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

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

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

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

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

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[Questions? Please let us know.](#)

Print

Done

EXHIBIT 6

Confidential Settlement Communication

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

Case title: Armando Ascencio v. Monarch Litho Inc.
Case no.: 24STCV27524
Court: Los Angeles
Judge: The Honorable Carolyn B. Kuhl, Dept. SSC-12
Page subject: **Data**

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Wednesday, October 21, 2020
Lab.Code § 203 (waiting time penalties) period begins:	Thursday, October 21, 2021
Lab.Code § 2699 (civil penalties) period begins:	Sunday, October 15, 2023
Lab.Code § 226 (pay stub penalties) period begins:	Saturday, October 21, 2023
LWDA Notice:	Tuesday, October 15, 2024
Lawsuit:	Monday, October 21, 2024
Sample begin:	Monday, October 19, 2020
Sample end:	Friday, August 2, 2024
Sample calendar days:	1,383
Mediation:	Monday, March 10, 2025
Anticipated Settlement Period end date:	Tuesday, July 8, 2025
Settlement Period to Sample Period:	124.44%

Classes / Groups sizes

UCL Class Members:	111
UCL Workweeks:	17,790
UCL Wage Statements:	17,790
UCL Workdays:	81,834
UCL Calendar days:	1,601
UCL Months:	4,094
 Waiting Time Penalties Class Members:	 93
 PAGA Aggrieved Employees:	 89
PAGA Wage Statements:	3,825
 Wage Statement Class Members:	 88
Wage Statement Class Wage Statements:	3,921

Averages

Average Hourly Rate:	\$	17.99
Average Overtime Rate:	\$	26.99
Average Doubletime Rate:	\$	35.98
 Average Work Hours Per Day:		 8.50
Average Work Hours Per Week:		38.80
Average Workdays Per Week:		4.60
Workdays to Calendar Days (%):		65.71%
Paycycle:		weekly
Paychecks Per Year:		52

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Case title: Armando Ascencio v. Monarch Litho Inc.
Case no.: 24STCV27524
Court: Los Angeles
Judge: The Honorable Carolyn B. Kuhl, Dept. SSC-12
Page subject: **Unpaid Off-the-clock wages**
Authority: Lab.Code §§ 1194, 1194.2, and 1198

Average Hourly Rate:	\$	17.99
Unpaid hours per pay week:		1.00
Actionable workweeks:		17,790
Interest:		10%
Unpaid off-the-clock wages:	\$	352,046.31
Liquidated damages:	\$	352,046.31

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Case title: Armando Ascencio v. Monarch Litho Inc.
Case no.: 24STCV27524
Court: Los Angeles
Judge: The Honorable Carolyn B. Kuhl, Dept. SSC-12
Page subject: **Unpaid overtime wages due to time shaving**
Authority: Lab.Code §§ 510, 1194, and 1198

Average Hourly Rate:	\$	17.99
Average Overtime Rate:	\$	26.99
Actionable workdays:		81,834
% of workdays with unfavorable time shaving:		42.60%
Average hours shaved per workday:		0.17
Interest rate:		10%
Unpaid overtime wages due to time shaving:	\$	175,916.84

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Case title: Armando Ascencio v. Monarch Litho Inc.
Case no.: 24STCV27524
Court: Los Angeles
Judge: The Honorable Carolyn B. Kuhl, Dept. SSC-12
Page subject: **Unprovided Meal Periods**
Authority: Lab.Code §§ 226.7, 512, and 1198

Average Hourly Rate:	\$	17.99
Actionable workdays:		81,834
% of workdays with at least one meal period violation:		100.00%

Meal period premium wages:	\$	1,472,193.66

Confidential Settlement Communication

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Case title: Armando Ascencio v. Monarch Litho Inc.
Case no.: 24STCV27524
Court: Los Angeles
Judge: The Honorable Carolyn B. Kuhl, Dept. SSC-12
Page subject: **Unprovided Rest Periods**
Authority: Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	\$	17.99
Actionable workdays:		81,834
% of workdays with at least one rest break violation:		100.00%

Rest period premium wages:	\$	1,472,193.66

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Case title: Armando Ascencio v. Monarch Litho Inc.
Case no.: 24STCV27524
Court: Los Angeles
Judge: The Honorable Carolyn B. Kuhl, Dept. SSC-12
Page subject: **Unreimbursed expenses**
Authority: Lab.Code § 2802

Actionable workweeks:		17,790
Average weekly cellphone cost attributable to work:	\$	10.00
Interest rate:		10%
Unreimbursed cellphone expenses:	\$	195,690.00

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Case title: Armando Ascencio v. Monarch Litho Inc.
Case no.: 24STCV27524
Court: Los Angeles
Judge: The Honorable Carolyn B. Kuhl, Dept. SSC-12
Page subject: **Itemized Wage Statements**
Authority: Lab.Code § 226

Wage Statement Class Members:		88
Wage Statement Class Wage Statements:		3,921
Initial penalty:	\$	50.00
Subsequent penalty:	\$	100.00
Statutory wage statement penalties:	\$	387,700.00

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Case title: Armando Ascencio v. Monarch Litho Inc.
Case no.: 24STCV27524
Court: Los Angeles
Judge: The Honorable Carolyn B. Kuhl, Dept. SSC-12
Page subject: **Waiting Time / Final Wages**
Authority: Lab.Code § 203

Waiting Time Penalties Class Members:		93
Days waiting:		30
Average Hourly Rate:	\$	17.99
Average Overtime Rate:	\$	26.99
Average Doubletime Rate:	\$	35.98
Average Work Hours Per Day:		8.50
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.50
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	439,180.88

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Case title: Armando Ascencio v. Monarch Litho Inc.
Case no.: 24STCV27524
Court: Los Angeles
Judge: The Honorable Carolyn B. Kuhl, Dept. SSC-12
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Pay periods		Total
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	3,825	\$	382,500.00
Overtime wages/M meal Periods (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	3,825	\$	191,250.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	3,825	\$	382,500.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	3,825	\$	382,500.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 2699	\$ 100.00	3,825	\$	382,500.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	3,825	\$	382,500.00
Total:				\$	2,103,750.00

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Case title: Armando Ascencio v. Monarch Litho Inc.
Case no.: 24STCV27524
Court: Los Angeles
Judge: The Honorable Carolyn B. Kuhl, Dept. SSC-12
Page subject: **Totals**
Authority: Various

Restitution	Reduction		Demand
Unpaid off-the-clock wages:	\$ 352,046.31	5% \$	334,443.99
Liquidated damages:	\$ 352,046.31	5% \$	334,443.99
Unpaid overtime wages due to time shaving:	\$ 175,916.84	5% \$	167,121.00
Meal period premium wages:	\$ 1,472,193.66	5% \$	1,398,583.98
Rest period premium wages:	\$ 1,472,193.66	5% \$	1,398,583.98
Unreimbursed cellphone expenses:	\$ 195,690.00	5% \$	185,905.50
Restitution subtotal:	\$ 4,020,086.78	\$	3,819,082.44
Penalties			
Statutory wage statement penalties:	\$ 387,700.00	5% \$	368,315.00
Waiting time penalties:	\$ 439,180.88	5% \$	417,221.83
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 382,500.00	5% \$	363,375.00
Overtime wages/Meal Periods (Lab.Code § 510):civil penalties:	\$ 191,250.00	5% \$	181,687.50
Rest periods (Lab.Code § 1198):civil penalties:	\$ 382,500.00	5% \$	363,375.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 382,500.00	5% \$	363,375.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 382,500.00	5% \$	363,375.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 382,500.00	5% \$	363,375.00
Penalties subtotal:	\$ 2,930,630.88	\$	2,784,099.33
Grand total:	\$ 6,950,717.65	\$	6,603,181.77

EXHIBIT 7

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
3 9454 Wilshire Blvd.
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6 Telephone (310) 499-4730
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OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
10 **(UNLIMITED JURISDICTION)**

11 ALINA GHRDILYAN; EVGENIA
12 SULTANIAN; and all others similarly situated,

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

16 RJ FINANCIAL, INC., a California
17 corporation; RAMIL ABALKHAD, an
18 individual; and DOES 1 through 50, inclusive,

19 *Defendants.*

Action filed: 01/28/2010
CMC: 05/10/2010, 8:30 a.m.
FSC: Not set
Trial: Not set
Dept: 36, Hon. Gregory Alarcon

22 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
23 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
24 RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively
25

26 THE
27 **SPIVAK**
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

8 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

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

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

FAILURE TO PROVIDE REST AND MEAL PERIODS

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

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

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

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

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

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

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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

Respectfully submitted,

THE SPIVAK LAW FIRM



By:

Date: February 23, 2010

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

EXHIBIT 8

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

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

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

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

19 IT READS NOW, (READING:)

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

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

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

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

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

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 9

2013 WL 766535
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.
Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. [Charles F. Palmer](#), Judge. Reversed and remanded. (Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

Dickstein Shapiro, [Arthur Silbergeld](#), [Christine de Bretteville](#) for Defendants and Appellants.

Altshuler Berzon, [Michael Rubin](#), [Eileen B. Goldsmith](#); Law Offices of Joseph D. Tuchmayer, [Joseph D. Tuchmayer](#); Law Offices of Todd Arron, [Todd S. Arron](#) for Plaintiffs and Respondents.

Opinion

[BOREN](#), P.J.

***1** We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the “**prevailing** party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

FACTS²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a “residual bonus.” A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus. Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees \$0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from \$455 to \$35,719. The court awarded plaintiffs’ counsel attorney fees of \$881,715. The court rejected plaintiffs’ claim under PAGA for lack of standing, because plaintiffs left defendants’ employ before PAGA took effect in 2004.

*2 Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court’s award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court’s award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs “could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees.”

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court’s award of \$881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.³

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of \$307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants’ July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for \$2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs’ request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants’ view, the “catalyst” theory is inapposite because no public interest was vindicated by plaintiffs’ lawsuit.

THE TRIAL COURT’S RULING

*3 The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the prevailing parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings; these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of \$346,947.

DISCUSSION

1. Appeal and Review

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not prevail on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. Overview of § 218.5

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or employers, whichever is the prevailing party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. The Catalyst Theory

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.⁴ It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

*4 The doctrine " " "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." " " (*Graham, supra*, 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation.” (*Graham, supra*, 34 Cal.4th at pp. 560–561.)

“ ‘A plaintiff will be considered a “successful party” where an important right is vindicated “by activating defendants to modify their behavior.” ’ ” (*Graham, supra*, 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham*, the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, “implicated an issue of public safety, and [] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards.” (*Id.* at pp. 577–578.)

4. Plaintiffs’ Right to Recover Attorney Fees

Plaintiffs originally brought suit in 2004 “on behalf of themselves and the general public.” They requested attorney fees pursuant to § 218.5. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the prevailing party under § 218.5, we import the definition used in the Code of Civil Procedure (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a prevailing party as “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (Code Civ. Proc., § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § 218.5, plaintiffs were not the prevailing party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § 218.5, plaintiffs argue that the theory should apply, based on defendants’ July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § 218.5, which mandates an award of attorney fees to the “prevailing party.” Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

*5 The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants’ 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts “not only to determine the lawsuit’s catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit.” (*Graham, supra*, 34 Cal.4th at p. 576.) Plaintiffs cannot be a “successful party” if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs’ lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra*, 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year’s end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the “catalyst” theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor’s constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a \$1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit “ ‘that genuinely provide[d] a public benefit.’ ” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. Defendants’ Right to Recover Attorney Fees

Section 218.5 is a reciprocal attorney fees statute that requires an award of fees to the “prevailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 218.5 when they filed suit. Defendants were the prevailing parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [prevailing party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not prevail on any claims.

*6 Plaintiffs contend that their claims for fees under § 218.5 were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the prevailing party under § 218.5. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § 218.5 lists only one remotely pertinent exception: “This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.”⁵ Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who prevail on their minimum wage or overtime compensation claims.

Section 218.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the employer to become the prevailing party in the litigation. Defendants are the prevailing party under § 218.5, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.⁶

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the prevailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 218.5 will be referred to in this opinion as § 218.5.

² The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

³ Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount plaintiffs are entitled to

reasonable fees for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- * Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

EXHIBIT 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

Michael Paul Guta, Law Offices of John E. Hill, Oakland, CA, for Plaintiff and Appellant.

Wesley Jerome Fastiff, Michael Gayland Pedhirney, Littler Mendelson, San Francisco, CA, for Defendant and Respondent.

Opinion

NEEDHAM, J.

*1 Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to [Labor Code section 218.5](#), after the court granted respondent's motion for summary judgment. Appellant contends: (1) [Labor Code section 218.5](#) did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under [Labor Code section 1194](#); (2) the court should have apportioned the attorney fees between appellant's unpaid wages claim and her constructive termination claim, for which no attorney's fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was "owed wages" and was "owed for accrued paid time off," and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu's "conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment." In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and "reasonable attorney's fees, pursuant to [Labor Code Section 218.5](#)." Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not **prevail** on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the **prevailing** party, was eligible to recover its reasonable attorney fees and costs.²

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the **prevailing** party and entitled to recover its fees and costs under [Labor Code section 218.5](#). Café Tiramisu requested \$36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

*2 Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under [Labor Code section 218.5](#), which authorizes recovery by the **prevailing** party, because her action was for overtime wages governed by [Labor Code section 1194](#), which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of \$36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) [Labor Code section 218.5](#) was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. Recovery of Attorney Fees Under [Labor Code Section 218.5](#)

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to [Labor Code section 218.5](#).³ [Section 218.5](#) provides in pertinent part: "In any action brought for the *nonpayment of wages*, fringe benefits, or health and welfare or pension fund contributions, the court *shall* award reasonable attorney's fees and costs to the **prevailing** party if any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of [section 218.5](#) was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to [Labor Code \[sections\] 226.7 and 227.3](#)." [Section 226.7](#) refers to pay for time worked during mandated meal periods, and [section 227.3](#) refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the **prevailing** party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. ([Code Civ. Proc. § 1032, subd. \(a\)\(4\)](#).)

Third, Maria expressly requested attorney fees and costs pursuant to [section 218.5](#) upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees*, and costs of suit." (Italics added.)

*3 Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the **prevailing** party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.⁴

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled*. Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages*, constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

*4 Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the **prevailing** party to recover attorney fees. (*Earley*, at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: “The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars employers from relying on section 218.5 to recover fees in any action for *minimum* wages or *overtime* compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for ‘wages, fringe benefits, or health and welfare or pension fund contributions.’ [Footnote omitted.]” (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley, supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.⁵

B. Apportionment Among Causes of Action

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its “refusal to pay [her] wages owed.” As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria “wages.”

*5 Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. Apportionment as to Other Plaintiffs

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the “deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases.” She also states: “respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court.”

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: [SIMONS](#), Acting P.J., and [BRUINIERS](#), J.

Footnotes

- ¹ The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.
- ² Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under [Labor Code section 206.5](#). In August 2011, we affirmed the judgment.
- ³ Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- ⁴ Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "
- ⁵ It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

EXHIBIT 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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Opinion

ORDER

[LAWRENCE K. KARLTON](#), Senior District Judge.

***1** On August 19, 2009, the court granted defendants' motion for judgment on the pleadings, dismissing four of plaintiffs' causes of action for failure to state a claim, and dismissing the fifth and sole remaining cause of action for lack of subject matter jurisdictions. Defendants have submitted a bill of costs and separately moved for attorneys' fees, both of which have been opposed by plaintiffs. The court resolves the matter on the papers and after oral argument. For the reasons stated below, defendants' motion for fees and costs is granted in part.

I. BACKGROUND

Defendants Heidi and James Guertin allegedly operate a business under the name Norcal Plastering. Plaintiffs, four individuals formerly employed by Norcal, filed suit purporting to represent themselves and others similarly situated. The complaint stated five causes of action, for violations of (1) [California Labor Code section 1194](#), (2) the Fair Labor Standards Act, (3) [California Labor Code section 226.7](#), (4) [California Labor Code section 203](#), and (5) [California Business and Professions Code section 17203](#).

On August 19, 2009, the court held that plaintiffs' allegations were insufficient to support the second through fifth claims. The Fair Labor Standards Act claim failed because plaintiffs had not alleged facts sufficient to support the inference that Norcal Plastering or plaintiffs themselves engaged in interstate commerce, a predicate for liability under the act. Order at 8–11. The Third, Fourth, and Fifth claims failed because the allegations therein pertained to entities not party to this suit. *Id.* at 11–12. The court denied plaintiff's request for leave to amend to correct these deficiencies, explaining that plaintiffs had notice of these deficiencies before the scheduling order was entered, but that plaintiffs had taken no action to correct them until discovery in the case had closed. The court dismissed these claims, and declined to retain supplemental jurisdiction over plaintiffs' sole remaining claim. Judgment on the pleadings under [Fed.R.Civ.P. 12\(c\)](#) was entered for defendants on August 19, 2009.

Defendants filed a bill of costs and motion for attorneys fees. Plaintiffs oppose both, arguing that defendants were not

“prevailing parties” because, as plaintiffs understood this court’s August 19, 2009 order, the state law claims had been dismissed without prejudice, and plaintiffs were free to refile the federal claim in federal court. Plaintiffs alternatively argue that even if defendants prevailed, they are not entitled to a fee award under the court’s inherent power or under any statute.

II. DISCUSSION

A. Defendants Are A Prevailing Party

Under all of the fee shifting authorizations at issue in this case, fees and costs are only available to prevailing parties. Under California law, “a defendant in whose favor a dismissal is entered” is a prevailing party. [Cal.Code Civ. P. § 1032\(a\)\(4\)](#). Under federal law, a party has not prevailed unless it “experienced an alteration in the legal relationship” with the other parties. [Avery v. First Resolution Management Corp.](#), 568 F.3d 1018, 1024 (9th Cir.2009). Plaintiffs argue that the court’s order permits plaintiffs to refile each of their claims, and that as a result, no such change has occurred. *Id.*, [Oscar v. Alaska Dep’t of Educ. & Early Dev.](#), 541 F.3d 978, 982 (9th Cir.2008).

*2 Plaintiffs misunderstand the nature of the prior order and its effect under California and federal law. [Fed.R.Civ.P. 41\(b\)](#) provides that “[u]nless the dismissal order states otherwise ... any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” Thus, although the dismissal order did not specifically state that it was “on the merits” or “with prejudice,” dismissal of the second through fifth claims was precisely such an adjudication. [Stewart v. United States Bancorp](#), 297 F.3d 953, 956 (9th Cir.2002). Plaintiffs’ contention that a dismissal for failure to allege the elements of a cause of action is not a substantive dismissal is without merit. *Id.*

Plaintiffs’ first claim, which was dismissed for lack of subject matter jurisdiction, was not adjudicated on the merits. [Avery](#), 568 F.3d at 1024. The fact that plaintiff may refile this one claim does not defeat defendants’ claim to prevailing party status as to the others.

B. Particular Fee Shifting Provisions

Defendants argue that they are entitled to fees under [28 U.S.C. section 1927](#), under [Cal. Lab.Code section 218.5](#), and under the court’s inherent authority. The court discusses each in turn.

1. [28 U.S.C. § 1927](#)

“Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” [28 U.S.C. § 1927](#). Here, defendants have not identified any act by which plaintiffs multiplied the proceedings. Filing of the initial complaint cannot itself violate this section. “Because the section authorizes sanctions only for the ‘multipli[cation of] proceedings,’ it applies only to unnecessary filings and tactics once a lawsuit has begun.” [Moore v. Keegan Mgmt. Co. \(In re Keegan Mgmt. Co., Sec. Litig.\)](#), 78 F.3d 431, 435 (9th Cir.1996). Nor did plaintiffs’ counsel’s response to depositions noticed by defendants “multipl[y] the proceedings.”

Rather than identify affirmative acts, defendants argue that plaintiffs’ counsel multiplied proceedings by failing to withdraw and dismiss the case after the close of discovery. The only authority provided for this interpretation of [section 1927](#) is a case from the Southern District of Florida. See [Murray v. Playmaker Servs., LLC](#), 548 F.Supp.2d 1378, 1383 (S.D.Fla.2008). The court respectfully disagrees, and thereby declines to conclude that an attorney multiplies proceedings simply by failing to voluntarily dismiss an existing lawsuit.

2. The Court's Inherent Powers

The court has an inherent authority to order payment of fees as a sanction “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for an improper purpose.” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir.2001) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 and n. 10, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); see also *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In this case, defendants argue that plaintiffs have done a poor job of litigating this case, and that this demonstrates that they filed their a purported class action for the allegedly improper purpose of pressuring defendants to settle, rather than for any belief as to the action's merits. This argument is unsupported. Although, as noted in the order granting defendants' motion for judgment on the pleadings, plaintiffs did little in the litigation of this case, this does not demonstrate bad faith or other grounds for sanction under the court's inherent authority.

*3 Defendants also argue that plaintiffs have demonstrated bad faith by filing a complaint in state court that re-alleges the four the state-law claims previously filed in this court. Whether that filing is in bad faith is an issue for the state court.

3. Cal. Lab.Code § 218.5

Lastly, defendants argue that the court should award fees under [California Labor Code section 218.5](#). This statute provides that “in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party.” [Cal. Lab.Code § 218.5](#). The Ninth Circuit has held that this provision may be applied in suits filed in federal court. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815 (9th Cir.2009) (affirming award of fees to a prevailing plaintiff); see also *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir.1985) (“federal courts in diversity actions apply state law with regard to the allowance (or disallowance) of attorneys' fees.”). The court concludes that this section applies to one of plaintiffs' claims, that an award of fees is mandatory and not limited to cases in which plaintiffs acted wrongfully, and that defendants prevailed for purposes of this statute.

First, [section 218.5](#) does not apply to all wage claims. The statute contains an exemption, specifying that “[t]his section does not apply to any action for which attorney's fees are recoverable under [\[California Labor Code\] Section 1194](#).”¹ [Section 1194](#) governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim “for nonpayment of wages” under [section 218.5](#).² See *Murphy v. Kenneth Cole Production, Inc.*, 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within [section 218.5](#), and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg*'s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg*, 434 U.S. at 416; see also 42 U.S.C. § 2000e–5(k) (“the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.”).³ The Court's holding directed the lower courts in their exercise of this discretion. [Section 218.5](#), in contrast, provides that the court “shall” award fees. “As used in the Labor Code, ‘shall’ is mandatory.” *Smith v. Rae–Venter Law Group*, 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in* *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. [Cal.Code. Civ. P. § 1032\(a\)\(4\)](#), *On–Line Power, Inc. v. Mazur*, 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by [section 218.5](#), a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.⁴

*4 Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond*, 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request \$29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at \$315 per hour.⁵ The court has previously held that \$300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond*, 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. See Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

*5 Thus, defendants are entitled to a fees for 70.6 hours of work at \$300 per hour, or \$21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of \$1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT 13

05-30-2013 | 05:13 PM | Author: [Robin Shea](#)

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)



Earlier, I busted on "my own side" by giving [four reasons why employers shouldn't be so quick to fire their employees](#). To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid *legal* claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

***Most people consider a lawsuit an "act of war."** They probably *were* on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to sue! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. *AWKWARD!* No wonder they've turned on you.

***Some employees really, sincerely do believe the company was in the right.** Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really *were* very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

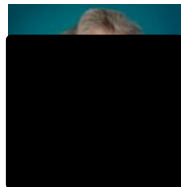
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably *don't* have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents **employees** in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the [Employment and Labor Law Insider](#) for additional insights from [Robin Shea](#), a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

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Tags: [employee lawsuits](#)

EXHIBIT 14

April 29, 2014

HUFF
POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning -- make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

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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

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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

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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



Quotation Request:

Lizette Cortez
 Spivak Law
 lizzett@spivaklaw.com

Case Name: Ascencio/Monarch Litho Inc.
Date: Tuesday, March 18, 2025
RFP Number: 28111005

Prepared By:

Michael Sutherland
 Apex Class Action LLC
 mike@apexclassaction.com
 321.223.5067

Settlement Specifications	
Estimated Class Size:	120
Certified Language Translation:	Yes
Static Settlement Website:	Yes
Percentage of Undeliverable Mail:	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost

Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	1	\$125.00
Data Analyst	Per Hour	\$150.00	1	\$150.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$275.00

Mailing of Class Notice				
Form Set Up	Per Hour	\$120.00	1	WAIVED
Print & Mail Class Notice	Per Piece	\$1.00	120	\$120.00
USPS First Class Postage	Per Piece	\$0.73	120	\$87.60
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$2.00	12	\$24.00
Receive and Process Undeliverable Mail	Per Hour	\$75.00	1	\$37.50
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	1	\$37.50
NCOA Address Update (USPS)	Static Rate	\$25.00	1	\$25.00
Certified Language Translation: Spanish	Static Rate	\$1,000.00	1	\$1,000.00
Sub Total:				\$1,331.60

Project Management				
Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	1	\$90.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
Sub Total:				\$530.00



APEX

CLASS ACTION ADMINISTRATION

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost

Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$50.00	1	\$50.00
Settlement Website: Static Apex URL	Static Rate	\$500.00	1	\$500.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Spanish Translation	Static Rate	\$750.00	1	\$750.00
Sub Total:				\$1,300.00

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	2	\$240.00
Account Management and Reconciliation	Per Hour	\$140.00	2	\$280.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.00	120	\$120.00
USPS First Class Postage	Per Piece	\$0.73	120	\$87.60
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$1.50	12	\$18.00
Reminder Postcard, USPS Postcard Postage	Per Piece	\$1.00	36	\$36.00
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	6	\$600.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$750.00	1	\$750.00
Unclaimed Funds: State Controller's Unclaimed Property Fund	Static Rate	\$250.00	1	\$250.00
Sub Total:				\$2,381.60

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$125.00	1	\$125.00
Project Management Reconciliation	Per Hour	\$100.00	1	\$100.00
Declarations	Per Hour	\$120.00	1	\$120.00
Sub Total:				\$345.00

TOTAL ESTIMATED ADMINISTRATION COST:	\$6,163.20
TOTAL CAPPED ADMINISTRATION COST:	\$4,990.00

Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").
2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.
3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.
4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.
5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.
6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.
7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.
8. **Apex warrants** that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.
9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.
10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this section may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership** of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT 16



Reference No. 20250319-PJI-01

March 19, 2025

Lizzett Cortez
The Spivak Law Firm
1875 Century Park East Fl 7
Los Angeles CA 90067

RE: *Ascencio v. Monarch Litho Inc.*

Dear Lizzett,

Thank you for this opportunity to provide a quote for your above-captioned settlement. Using the parameters you described, Simpluris' total estimated cost is \$9,513. As a courtesy, we are offering a \$3,013 discount, for a discounted total of \$6,500.

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:	20250319-PJI-01	Prepared By:	Patrick J. Ivie
Estimate Date:	3/19/2025	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	6/17/2025	Email:	pivie@simpluris.com

Primary Contact
Attorney: **Lizzett Cortez**
Firm: The Spivak Law Firm
Email: lizzett@spivaklaw.com

Opposing Counsel Contact
Attorney:
Firm:
Email:

**Case Name: Ascencio v. Monarch Litho Inc.
Class and PAGA Settlement**

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	120	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 and Address Change 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	120	\$720.00
Postage	\$0.72	120	\$86.40
NCOA/CASS/LACS	\$0.14	120	\$16.80
Undeliverable Processing and Skip Trace	\$0.32	12	\$3.84
Remail Notice (assuming 85% skip trace success)	\$7.00	10	\$71.40
Remail Postage	\$0.72	10	\$7.34
Single Postcard Reminder Mailing	\$0.18	120	\$21.60
Postage	\$0.55	120	\$66.00
Mailing Supervisor	\$55.00	2	\$110.00
Total:			\$2,853.38

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	\$10.50
Opt-out Processing	\$1.75	2	\$3.50
Reporting to Counsel (hours)	\$100.00	2	\$200.00
Total:			\$449.00

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	120	\$72.00
Postage	\$0.72	120	\$86.40
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:			\$4,250.52

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:	\$9,513
Less Client Courtesy Discount:	-\$3,013
Discounted Total:	\$6,500

Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and compensation for services Simpluris performs for financial institutions to be eligible for FDIC deposit insurance. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

10. Rights in Data: Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

11. Electronic Communications: During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

12. Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

13. Waiver: Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

14. Termination: Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.

17. Confidentiality: Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

18. Indemnification: Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, in connection with , or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.

19. Severability: If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Database Administration: Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

21. Entire Agreement: These Terms and Conditions together with the Proposal constitutes the entire agreement between the parties with respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

EXHIBIT 17



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

March 19, 2025

CASE ASSUMPTIONS

Class Members	120
Opt Out Rate	1%
Opt Outs Received	3
Total Class Claimants	117
Subtotal Admin Only	\$7,203.42

Flat Fee Total \$7,000.00

For 120 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: Ascencio v. Monarch Lithio, Inc., Opt-Out Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Lizzett Cortez

Firm: The Spivak Law Firm

Contact Number: 818-582-3197

Email: lizzett@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **120** 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	17		\$33.60
NCOA (USPS)	\$24.00	1		\$24.00
Total				\$557.60

* 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	\$1,000.00	1		\$1,000.00
Data Merge & Duplication Scrub	\$0.10	120		\$12.00
Notice Packet & Opt-Out Form	\$1.50	120		\$180.00
Estimated Postage (up to 2 oz.)*	\$0.90	120		\$108.00
Static Website	\$200.00	1		\$200.00
Total				\$1,700.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	18		\$18.00
Remail Notice Packets	\$1.00	15		\$15.00
Estimated Postage	\$0.90	15		\$13.50
Programming Undeliverables	\$50.00	2		\$100.00
Total				\$256.50

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	117		\$105.30
Estimated Postage	\$0.64	117		\$74.88
Total				\$950.18

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	2	\$230.00
Remail Checks (Postage Included)	\$2.00	25	\$49.14
Case Associate	\$55.00	3	\$165.00
Reconcile Uncashed Checks	\$85.00	5	\$425.00
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			\$2,999.14

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$7,203.42



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 18

CASE NAME: ASCENCIO v MONARCH LITHO INC.

Requesting Paralegal: Lizzett Cortez

Plaintiff or Defense: Plaintiff

Firm Name: The Spivak Law Firm

Telephone: (818) 582-3197

Email: lizzett@spivaklaw.com

Date: March 18, 2025

Prepared By: Tim Phillips

50 Corporate Park, Irvine CA 92606

Tim@CPTGroup.com

Direct Number: (818) 415-2703

Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Class Size: 120

Opt-Out Filing Rate: 1.5%

No. of Checks Issued: 118

Language Translation Services: Yes

Settlement Website: Static Website

Notice Procedures: Mail

Undeliverable Mail Rate: 8%

Payment Option: Check

Unclaimed Funds: SCO

Postage Total: \$272.01

Grand Total: \$11,959.97

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	12	\$10.20
Print & Mail Notice Packets	\$1.50	120	\$180.00
First-Class Postage (up to 1 oz.)*	\$0.97	120	\$116.40
Sub Total:			\$631.60

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

According to CPT's historical data, 8% of the notices are returned as undeliverable. Upon notification from USPS, CPT performs a skip trace to locate a current address. Typically, 70% of the undeliverable notice packets are eligible for remail with an updated address.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	10	\$5.00
Skip Trace for Best Address	\$1.00	9	\$9.00
Print & Remail Notice Packets	\$1.50	7	\$10.50
First-Class Postage (up to 1 oz.)	\$0.69	7	\$4.83
Sub Total:			\$89.33

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	\$4.50
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.69	1	\$0.69
Review & Process Deficiency Responses	\$10.00	1	\$10.00
Sub Total:			\$321.69

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	24	\$72.00
Sub Total:			\$372.00

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	118	\$11.82
Sub Total:			\$446.82

DISTRIBUTION SERVICES

CPT will establish a 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF). Upon Final Approval, CPT will perform the required settlement payment calculations, and once approved by the parties, CPT will issue a (MICR) check to all eligible claimants. CPT will also issue an IRS Form 1099 and/or IRS Form W2 when applicable. CPT utilizes the bank's Payee Positive Pay to prevent check fraud and performs monthly account reconciliations for the QSF bank account. Undeliverable checks are skip-traced to obtain a current address and are remailed accordingly. Requests for check reissues will be processed throughout the check cashing period. CPT's administration of the QSF will continue for a maximum duration of one year following the initial distribution of funds. Reminder check cashing postcards will be mailed out halfway through the check cashing period.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	118	\$295.50
First-Class Postage (up to 1 oz.)	\$0.69	118	\$81.56
Project Supervisor: Account Reconciliation	\$150.00	12	\$1,800.00
Update Undeliverable Checks Database	\$0.50	6	\$2.96
Skip Trace for Best Address	\$1.00	6	\$5.91
Remail Undeliverable Checks	\$2.50	5	\$12.50
First-Class Postage (up to 1 oz.)	\$0.69	5	\$3.45
Re-Issue Checks as Required	\$5.00	5	\$25.00
First-Class Postage (up to 1 oz.)	\$0.69	5	\$3.45
Reminder Postcard	\$0.40	95	\$37.82
Postage for Postcard	\$0.56	95	\$52.95
Sub Total:			\$4,311.10

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	25	\$3.75
Project Manager: Reporting & Remittance	\$95.00	2	\$190.00
Project Supervisor: Review of Report	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.68	1	\$8.68
Add'l Account Recons	\$150.00	3	\$450.00
Sub Total:			\$802.43

Total Administration Costs:	\$11,959.97
Courtesy Discount:	-\$3,459.97
CPT'S DISCOUNTED FLAT FEE:	\$8,500.00

TERMS AND CONDITIONS

These Terms and Conditions (“**Terms and Conditions**”) are made a part of, and incorporated by reference into, any Bid presented by CPT Group, Inc. (“**CPT**”) to Client. Each of Client and CPT is a “**Party**” to this Agreement, and collectively, the “**Parties**”.

1. Definitions.

- a) “**Affiliate**” means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) “**Agreement**” means these Terms and Conditions and the Bid.
 - c) “**Applicable Laws**” means all applicable local, state and federal laws, ordinances, rules and regulations.
 - d) “**Approved Bank**” means any financial institution that is insured by the Federal Deposit Insurance Corporation.
 - e) “**Bid**” means a proposal, statement of work, order form, and/or schedule for Services (including any and all addendums, exhibits, or amendments thereto) provided by CPT to Client.
 - f) “**Case**” means the case referred to in the attached Bid and/or the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the caption of the applicable Court Order.
 - g) “**Class**” means Members and putative Members collectively.
 - h) “**Client**” means the party or parties engaging CPT for Services as set forth in the Bid, namely Plaintiff Counsel and/or Defense Counsel.
 - i) “**Confidential Information**” means any non-public information of CPT or Client disclosed by either Party to the other Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other Party may have access, which a reasonable person would consider confidential and/or which is marked “confidential” or “proprietary” or some similar designation by the disclosing Party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient’s prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) “**Court Order**” means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more Parties To The Case to carry out a legal obligation pursuant to the Case.
 - k) “**Defendant**” means the named Party and/or Parties in the Case against whom action is brought.
 - l) “**Defense Counsel**” means the attorney(s) of record for the Defendant(s) in the Case.
 - m) “**Intellectual Property Right**” means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) “**Member**” means an individual who is eligible under the Case or Class to receive a communication about their pending legal rights under the matter and/or designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons or other parties in the representative action so designated or addressed therein.
 - o) “**Member Content**” means all Member written document communications relating to the Case, including claim forms, opt-out forms, and/or objections, which may contain Member Data.
 - p) “**Member Data**” means proprietary or personal data regarding Members under this Agreement.
 - q) “**Parties To The Case**” shall mean collectively Defendant(s) and Plaintiff(s) as defined in the Settlement Agreement or Court Order.
 - r) “**Plaintiff**” means the named party and/or parties in the Case who are bringing the action.
 - s) “**Plaintiff Counsel**” means the attorney(s) of record for Plaintiff(s) in the Case, and/or upon certification by the Court the attorney(s) of record designated to represent the Class.
 - t) “**Products**” means any and all CPT Services and work product resulting from Services.
 - u) “**Qualified Settlement Fund**” or “**QSF**” means a bank account established pursuant to U.S. Department of Treasury Regulations §1468B-1.
 - v) “**Service**” means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Members; (ii) setting up a QSF with an Approved Bank; (iii) management of disbursement of funds from the QSF to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - w) “**Settlement Agreement**” means the contract between Parties To The Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Members.
 - x) “**Settlement Amount**” means the total dollar amount agreed to between Parties To The Case to resolve the Case to mutual satisfaction.
 - y) “**Software**” means any and all of CPT’s software applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - z) “**Transmission Methods**” means the secure authorized manner to send Member Data and/or Wire Information as specified on a schedule or exhibit hereto.
 - aa) “**Term**” means the period commencing on the date set forth on the Bid and continuing until the date of final judgment (if a settlement) or upon completion of all Services as set forth in the Bid.
 - bb) “**Wire Information**” means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access and use Member Data for the purposes permitted under this Agreement and shall only transmit Member Data and/or Wire Information to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Member Data provided under this Agreement. Client further warrants that any Member Data, Wire Information, or other content, data, materials or information it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect Member Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **CPT Obligations.** CPT will (i) maintain appropriate safeguards designed to protect Member Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Member Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Parties To The Case, Members, Plaintiff Counsel or Defense Counsel as applicable.
4. **Security.** Client and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any Member Data in its possession or control under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such Member Data; (c) protect against unauthorized access to or use of such Member Data that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such Member Data in connection with its disposal.
- a) **Incident Notification.** In the event a Party discovers that Member Data relating to the Case is the subject of (i) any unauthorized acquisition, loss, access or use and/or (ii) an actual or suspected breach concerning such Party’s systems (items (i) and/or (ii) a “**Security Incident**”), or a Party has a reasonable belief that a Security Incident has occurred or is at risk of occurring, such Party will promptly but no later than forty-eight (48) hours of its discovery of such circumstances, inform the other Parties in the event of such Security Incident, and shall utilize best efforts to assist the other Parties to mitigate the effects of such Security Incident.
 - b) **Response Procedures.** In the event of a Security Incident, the breached party shall (i) cooperate with any reasonable investigation concerning the Security Incident by the other Parties, regulators and/or law enforcement; and (ii) cooperate with the other Parties to comply with Applicable Laws concerning such Security Incident, including any notification to affected individuals. The Parties acknowledge that the breached party in any Security Incident shall be the Party responsible for

any and all remedies and costs under Applicable Laws concerning such Security Incident, unless such breach occurred due to another Party's actions hereunder, in which instance such party shall be comparatively responsible for all remedies and costs. In no event will any Party serve notice or otherwise publicize a Security Incident without the prior written consent of the other Parties. The Parties shall reasonably cooperate and coordinate with each other to respond to the Security Incident, including with regard to the content of notification to affected individuals.

6. **Qualified Settlement Fund Account.** When the Case has a Settlement Amount CPT shall be authorized to establish one or more QSF bank accounts at an Approved Bank if and as applicable to the Services as set forth in the Bid. The amounts held at the Approved Bank under this Agreement are at the sole risk of Defendant. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing for Services is as stated on the Bid, and Client agrees to pay CPT in the amounts set forth on the Bid. Client will be invoiced per the schedule set forth in the Bid, and payment of fees will be due within 30 days after the date of the invoice, except where the Bid or terms of the Settlement Agreement or Court Order expressly prescribes other payment dates. All fees set forth in a Bid are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% per month (or the highest rate allowable by law, whichever is lower) on the outstanding balance from the date due until the date of actual payment, which such late charge(s) may be charged against the QSF account if incurred in connection with Services provided pursuant to administration of a settlement. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation. . In connection with CPT's administration of a QSF, unless otherwise stated in the Settlement Agreement or Court Order concerning disbursement of unclaimed funds in the QSF account, CPT reserves the right, after one (1) year of issuance of disbursements to Members, to classify any remaining balance in such QSF account as additional administrative fees payable to CPT until such time as the QSF account balance becomes zero (\$0.00), and thereafter close such account.
8. **Term and Termination.**
 - a) **Term.** The Term is set forth in the Bid. The Agreement may be renewed by mutual written agreement of the parties.
 - b) **Termination for Cause.** Either Party may immediately terminate this Agreement if the other Party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching Party's receipt of written notice describing the breach in reasonable detail.
 - c) **Bankruptcy Events.** A Party may immediately terminate this Agreement if the other Party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) **Effect of Termination.** Immediately following termination of this Agreement, upon written request, Member Data may be retrieved via the secure FTP site in the same format in which the Member Data was originally inputted into the Software, at no additional charge. Alternatively, Member Data can be returned in a mutually agreed format at a scope and price to be agreed upon. CPT will maintain a copy of Member Data and Member Content for no more than four (4) years following the date of the final check cashing deadline for Members under the Settlement Agreement, after which time any Member Data and Member Content not retrieved will be destroyed.
 - e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
9. **Confidentiality.** Each Party agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such Party's rights and responsibilities under this Agreement; and (iii)

to keep the Confidential Information confidential using the same degree of care such Party uses to protect its own confidential information; provided, however, that such Party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a) **Compelled Disclosure.** If receiving Party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such Party shall (i) promptly notify the other Party, (ii) reasonably cooperate with the other Party in such Party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each Party is advised by its counsel in writing is legally required to be disclosed.
 - b) **Remedies.** If either Party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other Party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** CPT retains all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. CPT does not claim any ownership rights to Member Data.
 11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "**Covered CPT Parties**") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "**Damages**") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Member Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
 12. **Warranties.** Each Party represents and warrants to the other Party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such Party; (iii) the Agreement is a legally valid and binding obligation of such Party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE
 13. **Liability.**
 - a) **Liability Cap.** EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CLIENT AND/OR THE PARTIES TO THE CASE TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and

certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law: Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such Party's reasonable control, provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the Parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by the Parties.
- f) Assignment. Neither Party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other Party's prior written consent; provided, however, either Party, without the consent of the other Party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such Party, where the responsibilities or obligations of the other Party are not increased by such assignment and the rights and remedies available to the other Party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("**Statistical Data**") derived from the operation of the Software, and

nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such Applicable Laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other Party as set forth on the Bid or at such other address as may hereafter be furnished in writing by either Party hereto to the other Party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each Party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither Party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT may use subcontractors to perform Client-specific Services; provided however, that CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either Party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Acceptance. If, when requested in writing by Client, CPT then provides any Service to Client, whether or not such Services were specified in the original Bid, these Terms and Conditions shall apply to the provision of such Services and be deemed accepted and approved by Client concerning such Services.
- q) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 19