

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 REBECCA KURKHILL, and all others similarly situated

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

10 **FOR THE COUNTY OF LOS ANGELES**

11 **(UNLIMITED JURISDICTION)**

12
13 REBECCA KURKHILL, on behalf of herself
14 and all others similarly situated, and the general
15 public, and as "PAGA Members" on behalf of
16 other "PAGA Members" and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 KENDO HOLDINGS INC., a Delaware
20 corporation; and DOES 1-50, inclusive,

21 *Defendant(s).*
22

Case No. 24STCV32366

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

Hearing Date: April 8, 2026

Hearing Time: 9:00 a.m.

Hearing Dept.: SSC-17, The Honorable
Laura A. Seigle

Action filed: December 06, 2024



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:

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

Office:

1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 **DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF REBECCA**
2 **KURKHILL'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 Rebecca Kurkhill ("Plaintiff") in her lawsuit against Defendant
7 Kendo Holdings Inc. ("Defendant"). Plaintiff and Defendant are collectively referred to as the
8 "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 (the "Settlement") is attached
12 hereto as **Exhibit 1**.

13 ***Factual and Procedural Background***

14 5. **Plaintiff's Employment with Defendant.** Defendant is a beauty products brand.
15 Defendant employed Plaintiff in California as a salesperson and keyholder from about March 24,
16 2023 until July 15, 2024.

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

22 7. **Lawsuit.** On December 6, 2024, Plaintiff filed a Class Action Complaint in the
23 Los Angeles County Superior Court, Case No. 24STCV32366, against Defendant on behalf of
24 herself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure
25 to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
26 (2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (3) Failure to Provide Meal
27 Periods (Lab. Code §§ 226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and
28 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.*). A



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 true and correct copy of the complaint is attached hereto as **Exhibit 3**. On January 29, 2025,
2 Plaintiff filed her First Amended Complaint adding a claim under the Labor Code Private
3 Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”). On , Defendant filed an
4 answer to Plaintiff’s First Amended Complaint. Defendant denies all of Plaintiff’s allegations and
5 strongly contends that its wage and hour policies, practices and procedures are fully compliant
6 with all applicable laws. A true and correct copy of Plaintiff’s First Amended Complaint is
7 attached hereto as **Exhibit 4**.

8 8. **Investigation.** On April 28, 2025, Plaintiff requested that Defendant informally
9 disclose documents and data to enable Plaintiff to prepare for settlement discussions, including
10 the number of putative class members and aggrieved employees, the number of paychecks and
11 workweeks for the various limitations periods applicable to Plaintiff’s claims. Plaintiff also
12 requested a reasonable, randomly selected sample of Defendant’s time, payroll, and expense
13 records, and related personnel records. *Id.* Finally, Plaintiff requested Defendant’s written policies
14 applicable to the claims at hand and asked Defendant identify any and all comparable claims
15 against Defendant.

16 9. The Parties thereafter engaged in an informal, voluntary exchange of information
17 in the context of privileged settlement discussions to facilitate an early mediation. Defendant
18 produced Plaintiff’s personnel file and copies of its relevant company written policies. Defendant
19 disclosed that there are no pending claims against it that will be impacted by this settlement.

20 10. **Sampling.** Defendant contends that it employed 200 putative Class Members
21 during the period of December 24, 2020 to June 21, 2025. Defendant produced the records of
22 20% of the putative class members for the period of December 24, 2020 to June 21, 2025. There
23 were records for 40 employees in the sample. Plaintiff chose the sample. The sample was
24 randomly selected. The sample consisted of time and payroll records in excel format.

25 11. **Plaintiff’s Data Analyst.** Plaintiff retained Antonio Whitfield, a data analyst, to
26 analyze the sample. Plaintiff also employed the Raosoft⁷ Sample Size calculator

27 ⁷ Raosoft advertises, “Raosoft, Inc. produces EZSurvey for the
28 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
programs for information gathering and analysis. The family of survey software supports data



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

(<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 15%, a confidence level of 95%, and a population size of 200, the Raosoft Sample Size Calculator recommended a sample of 36. A true and correct copy of the results from the Raosoft Sample Size Calculator are attached as **Exhibit 5** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

12. **Mediation.** On September 5, 2025, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Gail A. Glick, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement during the mediation session. During the mediation sessions, each side, represented by her / its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement.

Similar Actions

13. **Relevant Litigation and Claims.** I am not aware of any class, representative, or other collective action in any other court, in this, or any other jurisdiction, that asserts claims similar to those asserted in this action, on behalf of the class or group of individuals, some or all of whom would also be members of the class to find in this action. I have made a reasonable inquiry of the other members of my law firm and my counsel to determine whether they are aware of any such similar actions. Based on these inquiries, I am aware of

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>.



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 no such similar actions. Defendant further disclosed that there are no class, representative, or
2 other collective actions against it that might be impacted by this settlement.

3 ***Ascertainable and Numerous Class***

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

9 15. **Numerosity.** The Settlement Class has sufficiently numerous members to render
10 joinder impractical. No set number is required as a matter of law to maintain a class action. The
11 California Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that
12 there are approximately 200 Class Members. Plaintiff maintains that it would be impractical and
13 economically inefficient to require each Settlement Class Member to separately maintain an
14 individual action or be joined as a named plaintiff in this action. In light of these considerations,
15 the Settlement Class' membership is sufficiently numerous.

16 ***Predominant Common Questions***

17 16. A question of law or fact is common to the members of a class if it may be resolved
18 through common proof. In this case, there are many predominant common questions. In light of
19 the more lenient standard for certification of a settlement class, the Parties agree that for the
20 purposes of the Settlement only, the claims of the Class Members all stem from the same sources.
21 Plaintiff asserts all class members were subject to the same or similar operations and employment
22 policies, practices, and procedures. The claims arise from Defendant's alleged policy-driven
23 failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods,
24 failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to
25 issue proper wage statements, failure to timely pay wages, and related labor law violations, all of
26 which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties.
27 Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendant
28 failed to pay all wages earned to class members for all hours worked at the correct rates of pay;



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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

Typicality

17. Plaintiff contends that her claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that she, like absent Class Members was subject to the same relevant policies and procedures governing her compensation, hours of work and meal and rest periods. Because Plaintiff contends that she was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine Defendant's *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. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest with the absent Settlement Class Members. Plaintiff contends that she is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendant during the relevant time period, allegedly



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 suffered the same alleged injuries from the same alleged course of conduct, and there is no
2 evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff
3 has demonstrated her commitment to the Settlement Class by, among other things, retaining
4 experienced counsel, providing counsel with documents and extensively speaking with them to
5 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
6 well as exposing herself to the risk of attorneys' fees and costs awards against her if this lawsuit
7 had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative. The
8 declaration of Plaintiff Rebecca Kurkhill on this subject will be filed concurrently with this
9 declaration.

10 *Background of Class Counsel*

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

14 21. In December of 1995, the Supreme Court for the State of California admitted me
15 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
16 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
17 2013, I became admitted to the New York State Bar.

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

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

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

27 a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
28 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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

7 b. *Jorge Guzman v. Department of Justice*, United States District Court,
8 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
9 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
10 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
11 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent in
12 Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
13 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
14 1999.

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
FI 7
Los Angeles, CA 90067

1 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
2 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
3 Agent, followed by an award of Attorneys' fees and costs.

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

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

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

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

27 27. I have been involved in the prosecution of numerous wage and hour class actions
28 at various stages of litigation. A small sampling of the wage and hour class action cases in which



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 I have recently been counsel of records is as follows:

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

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

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

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

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

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

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

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

27 i. *La Fleur v. Medical Management International, Inc.*, United States District
28 Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 and granted final approval of class action settlement on behalf of practice managers).

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

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

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

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

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

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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

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

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

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

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

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

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

22 **Caroline Tahmassian's Experience and Qualifications**

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

26 29. Mrs. Tahmassian jointed the Spivak Law Firm in 2013 and has since focused her
27 practice on representation of employees in disputes with their employers, and on wage and hour
28 class and PAGA representative actions specifically involving claims of unpaid wages, unprovided



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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

Class Action Treatment Is Superior

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

The Settlement is Presumptively Fair

32. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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

11 *Exposure & Risk Analysis*

12 33. Plaintiff prepared "damages" estimates in advance of the mediation. Plaintiff
13 determined Defendant's maximum possible exposure for restitution and penalties to be
14 approximately \$4,575,477.46 (consisting of \$2,81,993.87 in unpaid wages, \$2,81,993.87 in
15 liquidated damages, \$512,716.13 in missed meal period premium wages, \$1,025,432.25 in missed
16 rest break premium wages, \$434,319.60 in unreimbursed expenses, \$220,950.00 for wage
17 statement penalties, \$720,346.75 for waiting time penalties, and \$1,097,725.00 for civil penalties
18 under PAGA). Plaintiff calculated the damages based on the number of workweeks and pay
19 periods provided by Defendant, Plaintiff's reports, and the sample data. True and correct copies
20 of the spreadsheets I prepared for mediation of this Action are collectively attached to this
21 declaration as **Exhibit 6**. The estimates are in essence "home run" projections that omit data
22 points that will undoubtedly reduce the maximum possible damages award and do not factor in
23 any of the risks involved in litigating this Action. Plaintiff calculated the damages based on the
24 number of workweeks and pay periods provided by Defendant, Plaintiff's reports, and the sample
25 data. *Id.*

26 34. However, based on the difficulties of proof, the Defendant's defenses, and the
27 other attendant risks Plaintiff identifies below, Plaintiff estimates the likely awards at trial
28 should Plaintiff prevail to be the following amounts:



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

- 1 a. Unpaid wages and liquidated damages with interest in the amount of
2 \$169,196.32;
3 b. Meal period premium wages with interest in the amount of \$153,814.84;
4 c. Rest period premium wages with interest in the amount of \$307,629.68;
5 d. Unreimbursed expenses with interest in the amount of \$130,295.88;
6 e. Statutory pay stub penalties in the amount of \$66,285.00;
7 f. Waiting time penalties in the amount of \$216,104.03; and
8 g. Civil penalties in the amount of \$329,317.50.

9 The total of these amounts is \$1,372,643.24. The Gross Settlement Amount of \$375,000.00 is
10 27.32% of this amount.

11 35. My initial estimates did not realistically account for the risks outlined below or the
12 risk that a class will not be certified. Therefore, I believe a class settlement for \$375,000.00 is fair
13 and reasonable.

14 36. **Risks Associated With A Pick-Up Stix Campaign.** Plaintiff first considered the
15 possibility that Defendant could launch a *Pick Up Stix* campaign and pursue individual release
16 agreements from the Class Members. An employer enjoys the right to settle a putative class
17 member's disputed wage claims individually, without the consent or involvement of class
18 counsel. See *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* Defendant may
19 launch a "pick off" settlement campaign to pursue individual release agreements from the Class
20 Members, thereby potentially narrowing the size of the Settlement Class – 200 members - until it
21 is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient
22 number of employees to represent. This led to a significant reduction of claim value in settlement
23 negotiations. Plaintiff's Counsel applied discounts to the maximum possible exposure to account
24 for all other risks discussed below. While it is difficult to assign anything but crudely-determined
25 percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign
26 would preclude recovery for such employees is substantial and alone justifies a significant
27 discount because Defendant would likely by trial have gathered releases from the majority of the
28 Class Members. A settlement for approximately 27.32% of the potential recovery is a proportion



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 substantially in excess of recovery proportions sanctioned by existing case law.⁸

2 37. **Risks Associated with the Arbitration Agreements.** The arbitration agreements
3 entered into between Defendant on the one hand, and the Class Members, on the other, present a
4 significant risk to the success of Plaintiff’s class action litigation. According to Defendant, of
5 those Class Members who worked at a Lip Lab store (as opposed to Kendo corporate),
6 approximately 40% signed an arbitration agreement with class action waivers. As the arbitration
7 agreements in question restrict potential litigants from bringing class actions against Defendant,
8 Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. Thus,
9 there is a significant risk the Court could determine that those Class Members who have not
10 entered into arbitration agreements with Defendant do not constitute a sufficiently numerous class
11 to justify class action treatment. As such, by continuing to trial on class-wide claims, Plaintiff
12 would run the high risk of suffering defeat due to the existence of the arbitration agreement.
13 Moreover, the arbitration agreements would pose danger to any class certification motion brought
14 by Plaintiff. Because different defenses would apply to some Class Members and not others – i.e.,
15 the existence of signed arbitration agreements – there is a risk that the Court could determine that
16 Plaintiff’s claims present too many individualized inquiries to justify class certification.

17 38. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff’s
18 recovery for unpaid wages would be extremely limited at best, largely because Defendant’s
19 written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock
20 claims are difficult where a defendant requires in its written policies that all work must take place
21 while clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer
22 must have notice of off-the-clock work for it to be compensable). In its written employment
23

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 policies, Defendant mandates that employees must record all time worked accurately on their time
2 records and strictly prohibit employees from performing any work off-the-clock. Moreover, while
3 Defendant disputes that off-the-clock work occurred, it contends that any time spent off the clock
4 was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th
5 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis*
6 defense even if compensable. (Stating that “We do not decide whether there are circumstances
7 where compensable time is so minute or irregular that it is unreasonable to expect the time to be
8 recorded.”). Following *Troester*, Defendant contends that the *de minimis* doctrine may apply here
9 because the time spent off the clock were minute and insignificant. Accordingly, a large award of
10 penalties seems unlikely with respect to this claim.

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

21 40. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s
22 meal period claim. Defendant contends that, to establish a violation for missed meal periods, a
23 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
24 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
25 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
26 performed.” *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or
27 prohibited the employee from taking a proper break, or otherwise failed to release the employee
28 of all control. “Thus, the crucial issue with regard to the meal break claim is the reason that a



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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

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

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

26 43. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
27 Court may consider Plaintiff’s claims as to Defendant’s alleged failure to indemnify for business
28 expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
FI 7
Los Angeles, CA 90067

1 Defendant required Plaintiff and the Class Members to use their personal items including cellular
2 phones and vehicles, and failed to indemnify them for these business expenses. Defendant denies
3 this allegation. As such, there is a risk that the Court may consider Plaintiff's claims to be
4 individual in nature and unfit for class wide resolution.

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

12 **45. Risks Associated with the Waiting Time Penalties Claims.** Without proof
13 willful behavior, Plaintiff will be unable to recover these penalties.

14 **46. Risks Associated With the PAGA Claim.** As the Operative Complaint makes
15 clear, Plaintiff predicates her PAGA claim on the same Labor Code violations as her other
16 claims. As I state above in connection with Plaintiff's claims for statutory penalties with regard
17 to proof of Defendant's intent, knowledge and willfulness, there are serious risks to proving
18 Defendant acted intentionally, knowingly, and willfully in violating the rights of Class Members
19 under the Labor Code. Plaintiff calculated the agreed-upon amount of civil penalties by
20 considering the risks outlined above and that the Settlement already provides substantial
21 payments for the Labor Code violations that the civil penalties claim is predicated on. Regarding
22 PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code §
23 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135
24 (reducing PAGA award). As set forth above, Defendant has posed valid defenses to the Labor
25 Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face
26 significant uncertainty. There is a risk that the Court would consider the maximum civil penalty
27 available to be confiscatory.

28 **47.** This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 required a significant discount for settlement purposes. For mediation purposes, I estimated a
2 maximum possible exposure of approximately \$1,097,725.00 in civil penalties. This estimate did
3 not take into account any of the risks discussed above and assumed a violation for every single
4 pay period. I also assessed multiple penalties for the same pay period for the same alleged
5 violations of different Labor Code provisions and derivative violations. Although two federal
6 district court decisions held that “stacking” PAGA penalties in this fashion may be appropriate to
7 determine the amount in controversy for purposes of removal jurisdiction, I am not aware of any
8 California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the
9 same pay period under different Labor Code provisions. This may be because the PAGA does not
10 provide for what many employers characterize as claim splitting and not merely stacking.

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

14
15 ⁹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
16 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,

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

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

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

28 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



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 amounts are well within the range of reasonableness and thus warrant this Court's preliminary
2 approval. In addition, based on my experience in wage and hour class action matters, fee awards
3 of approximately one-third of the settlement fund are routinely approved as reasonable. I have
4 been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage
5 and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior
6 Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior
7 Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*,
8 San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v.*
9 *Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-
10 third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court,
11 Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles
12 County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources,*
13 *LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund);
14 *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-
15 third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-
16 third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
17 BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of
18 California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et
19 al. Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal*
20 *Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund);
21 *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third
22 of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund);
23 *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King*
24 *v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay &*
25 *Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin*
26 *Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight*
27 *Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of
28 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).

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

53. 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

54. 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 she undertook on behalf of Class Members. Here, Plaintiff has devoted many hours



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
2 retaining experienced counsel, providing them with information about her work history with
3 Defendant and Defendant's policies and practices with respect to the wage and hour claims at
4 issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and
5 being actively involved in the settlement process to ensure a fair result for the Settlement Class
6 as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an
7 order to pay Defendant's attorneys' fees and costs if this action had been unsuccessful (*See* Labor
8 Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement
9 Class shows that the proposed Class Representative Service Payment is fair, adequate, and
10 reasonable, and thus warrant preliminary approval. Plaintiff Rebecca Kurkhill's declaration, filed
11 concurrently with mine, provides further information supporting her request for the Class
12 Representative Service Payment.

13 55. Plaintiff began her investigation and retention of attorneys to pursue the claims at
14 issue on approximately July 02, 2024. Awarding Plaintiff 4.00% of the GSA is entirely reasonable
15 given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In this case,
16 Plaintiff has devoted several hours of her time advancing the interests of the Class Members and
17 also expects to devote additional hours of her time with Class Counsel overseeing the
18 administration of the Settlement if the Court grants final approval of the Settlement. *See generally*
19 Declaration of Rebecca Kurkhill. Plaintiff has done this by, among other things, retaining
20 experienced counsel, providing them with extensive information about her work history with
21 Defendant and Defendant's policies and practices with respect to the wage and hour claims at
22 issue, assisting them in contacting absent Class Members to gather information, participating in
23 a full day of mediation, foregoing pursuit of her individual claims in favor of a fair class-wide
24 resolution, and being actively involved in the settlement process to ensure a fair result for the
25 Class Members as a whole.

26 56. As Class Representative, Plaintiff agreed to (1) consider the interests of the class
27 just as she would consider her own interests and, in some cases, to put the interests of the class
28 before her own interests; (2) actively participate in the lawsuit, as necessary, by among other



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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

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

- 23 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist.
24 March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be
25 paid by employee for employee's unsuccessful suit for unpaid bonuses). A true
26 and correct copy of the court's order is attached to this declaration as **Exhibit 9**.
- 27 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov.
28 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney's fees and



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

costs to employer for unsuccessful suit for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 10**.

c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb. 18, 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs to the employer for unsuccessful suit for unpaid wages and overtime). A true and correct copy of the court's order is attached to this declaration as **Exhibit 11**.

d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay \$21,180 in attorney's fees and \$1,525.80 in costs to defense counsel for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 12**.

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

58. 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 Defendant during the Class Period, compared to the total of the total period of time worked by all Participating Class Members during the Class Period, as reflected by Defendant's records. Because Plaintiff may have been employed for a shorter period during the Class Period, some Class Members will have worked more Pay Periods than Plaintiff and, as a result, receive larger shares in the recovery – *even though they did not actively participate in the lawsuit*. While this is a risk that Plaintiff assumed when she brought her lawsuit, it is unfair to limit Plaintiff's Class Representative Service Payment to an amount not much greater than an absent Class Members' share of the recovery. To encourage employees like



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 Plaintiff to don the helm of class champions (and thereby advance the important public policies
2 behind class actions), the Court should award something substantial to Plaintiff for her readiness
3 to receive less than absent Class Members while assuming all the risk and delay of payment.

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

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

19 61. Plaintiff faced the risk that she could face worsened career prospects for suing a
20 former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.
21 *See generally* Declaration of Rebecca Kurkhill. Because she filed a lawsuit in the California
22 Superior Court, a public record now exists that Plaintiff sued her employer for Labor Code
23 violations – a fact that won't be lost on prospective employers considering her for a job. Common
24 sense dictates that an employer will think twice about hiring someone who sued her last employer.
25 Legal experts have recognized this fact. Attached to this declaration as **Exhibit 13** is a true and
26 correct copy of the article "Employees: Better Think Twice Before Suing Your Employer (Four
27 Reasons Why)." Attached to this declaration as **Exhibit 14** is a true and correct copy of the article
28 "What To Expect If You Sue Your Employer." California even has laws to address this risk:



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
FI 7
Los Angeles, CA 90067

1 Labor Code § 1102.5 prohibits retaliation against employees who speak up about Labor Code
2 violations and Labor Code § 98.6 prohibits discrimination against employees who bring Labor
3 Code violations to the attention of the Labor Commissioner. Thus, the risk to Plaintiff's future
4 employment shows that the Class Representative Service Payment sought is fair, adequate, and
5 reasonable, and warrants final approval of the Court.

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

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

17 64. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
18 were significant risks to any award on behalf of the Class Members and still Plaintiff achieved a
19 settlement of \$375,000.00. This outstanding result calls for significant awards to Plaintiff for
20 making the result possible.

21 *Class Member and PAGA Members Settlement Share Estimates*

22 65. Above, Plaintiff estimates Plaintiff's anticipated Individual Class Payment.

23 66. **Individual Class Payments.** At \$26.31 per hour (the average Class Member's
24 hourly wage), the average estimated Individual Class Payment to Participating Class Members is
25 the equivalent of over 35.16 hours of unpaid wages (the primary remedies sought) (\$925.00 /
26 26.31= 35.16 hours). Thus, this is a result the Class can be proud of in view of the significant
27 risks.

28 67. Plaintiff estimates that there are 5,062 Pay Periods for the Class Period. So, each



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 Pay Period has a value of approximately \$36.55 (\$185,000.00 Net Settlement Amount / 5,062
2 Pay Periods = \$36.55). Plaintiff had 34 Pay Periods during the Class Period. Based on this, it is
3 anticipated that Plaintiff Rebecca Kurkhill will receive an Individual Class Payment of
4 approximately \$1,247.00 as a Participating Class Member (34 Pay Periods x \$36.55 = \$1,247.00)
5 while the average estimated Individual Class Payment to Participating Class Members will be
6 approximately \$925.00. Some Class Members – those who worked more Pay Periods during the
7 Class Period - will receive more, and some less. The highest possible Individual Class Payment
8 to a Participating Class Member (i.e., to those who qualify for all Pay Periods in the Class Period)
9 will be approximately \$4,784.93. The lowest possible Individual Class Payment to a Participating
10 Class Member (i.e., to those who qualify for only one Pay Period in the Class Period) will be
11 approximately \$36.55. The Individual Class Payment will be paid to each Class Member based
12 on his or her eligible Pay Periods compared to the total Pay Periods. Because this method
13 compensates Class Members based on the extent of their potential injuries, in that Class Members
14 who worked for Defendant longer would have been subject to more alleged violations, it is fair,
15 adequate, and reasonable.

16 **68. Individual PAGA Payments.** It is anticipated that the average PAGA
17 Member Individual PAGA Payment will be \$32.11. *Id.* Plaintiff's Individual PAGA Payment,
18 her individual share of 35% of the PAGA Penalties, will be less than that of some absent PAGA
19 Members. Under the Settlement, each PAGA Member will receive a *pro rata* distribution of
20 35% of the PAGA Penalties proportionate to the number of paychecks he or she had with
21 Defendant during the PAGA Period, compared to the total of all paychecks of all PAGA
22 Members during the PAGA Period, as reflected by Defendant's records. Plaintiff estimates that
23 there are 2,311 PAGA Member paychecks for the PAGA Period. So, each PAGA Member
24 paycheck from the PAGA Period has a value of approximately \$1.51 (35% of \$10,000.00 in
25 PAGA Penalties / 2,311 PAGA Member paychecks = \$1.51). It is anticipated that Plaintiff
26 Rebecca Kurkhill will receive an Individual PAGA Payment of approximately \$25.60 as a PAGA
27 Member (17 paychecks during the PAGA Period x \$1.51 paycheck value = \$25.60) while the
28 average estimated Individual PAGA Payment to an PAGA Member will be approximately \$32.11



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 (\$3,500.00, 35% of PAGA Penalties / PAGA Member paychecks during the PAGA Period =
2 \$32.11 Individual PAGA Payment). Some PAGA Members – those who had more paychecks
3 during the PAGA Period - will receive more, and some less. The highest possible Individual
4 PAGA Payment to an PAGA Member (i.e., to those who qualify for all paychecks in the PAGA
5 Period) will be approximately \$70.45. The lowest possible Individual PAGA Payment to an
6 PAGA Member (i.e., to those who qualify for only one paycheck in the PAGA Period) will be
7 approximately \$1.51.

8 *Class Notice*

9 69. The Notice (Exhibit A to the Settlement) provides Class Members with all
10 pertinent information that they need to fully evaluate their options and exercise their rights under
11 the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the
12 Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid;
13 (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to
14 the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members
15 will be calculated; (8) how the disputes will be resolved; and (9) the individual Settlement Class
16 Member's estimated payment. Additionally, the Class Notice will include the number of Pay
17 Periods a Class Member had during the Class Period. Accordingly, the Notice should be approved
18 because it describes the Settlement with sufficient clarity and specificity to explain to Class
19 Members what this action is about, their rights under the Settlement, and how to exercise those
20 rights.

21 *Administrator Duties*

22 70. The duties of the Settlement Administrator are spelled out in the Settlement and in
23 the bid provided by ILYM Group, Inc. a true and correct copy of which is attached hereto as
24 **Exhibit 15.**

25 *Administration Costs*

26 71. With regard to the settlement administration costs provision, it is reasonable.
27 Before agreeing to ILYM Group, Inc. the Parties sought and reviewed bids from other reputable
28 third-party administrators: (A) Phoenix Settlement Administrators = \$7,000.00 and (B) CPT



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 Group, Inc. = \$8,500.00. A true and correct copy of the bid from Phoenix Settlement
2 Administrators is attached hereto as **Exhibit 16**. A true and correct copy of the bid from CPT
3 Group, Inc. is attached hereto as **Exhibit 17**. The bid provided by ILYM Group, Inc. was
4 reasonable and comparable to other bids. Thus, the settlement administration costs provision
5 should be given preliminary approval.

6 ***Notice of Settlement to the LWDA***

7 72. Pursuant to Labor Code § 2699(1)(2), Plaintiff has provided notice of this
8 settlement to the LWDA with the filing and service of this motion. A true and correct copy of
9 Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 18**.

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

12 Executed on Monday, February 23, 2026 at New York, New York.

13 

14 DAVID SPIVAK,
15 Declarant
16
17
18
19
20
21
22
23
24
25
26
27
28



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Rebecca Kurkhill (“Plaintiff”) and Defendant Kendo Holdings Inc. (“Kendo”). The Agreement refers to Plaintiff and Kendo collectively as “Parties” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Kendo captioned *REBECCA KURKHILL, on behalf of herself and all others similarly situated, and the general public v. KENDO HOLDINGS, INC., a Delaware corporation; and DOES 1-50 inclusive*, initiated on December 6, 2024 in Los Angeles County Superior Court, Case No.: 24STCV32366, and amended on January 29, 2025.
- 1.2 “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Class” means all current and former non-exempt employees who worked for Kendo in California during the Class Period.
- 1.5 “Class Counsel” means David G. Spivak and Caroline Tahmassian of The Spivak Law Firm.
- 1.6 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” means the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.7 “Class Data” means the class member identifying information in Kendo’s possession, including the class member’s name, last-known mailing address, social security number, and number of pay periods worked during the Class Period and PAGA Period.
- 1.8 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as a PAGA Member).
- 1.9 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.10 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.11 “Class Pay Period” means any Pay Period during which a Class Member worked for Kendo on at least one day in California during the Class Period.
- 1.12 “Class Period” means the period from December 6, 2020 through December 18, 2025, or the date the Court enters an order granting preliminary approval of the Settlement, whichever occurs first.
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Los Angeles.
- 1.16 “Kendo” means the named Defendant Kendo Holdings, Inc.
- 1.17 “Defense Counsel” means Kent J. Sprinkle, Candace DesBaillets, and Sophia Jimenez of CDF Labor Law LLP.
- 1.18 “Effective Date” means the date of the latest of (a) entry of an order by the Court granting Final Approval of the Settlement; or (b) if there are objections to the Settlement which are not withdrawn, and if an appeal, review, or writ is not sought from the Final Approval Order and Judgment, the sixty-first (61st) day after service of notice of entry of Judgment; or (c) if there is an appeal, review, or writ, the dismissal or denial of the appeal, review, or writ, if the Judgment is no longer subject to further judicial review.
- 1.19 “Final Approval” means the Court’s Order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means Three Hundred Seventy Five Thousand Dollars and Zero Cents (\$375,000.00), which is the total amount Kendo agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administrator

Expenses Payment. Kendo shall be separately responsible for the cost of its share of employer-side payroll taxes. The Settlement is non-reversionary. Subject to Paragraph 8, Kendo will not be required to pay more than the Gross Settlement Amount to satisfy its obligations under the Settlement.

- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Pay Periods worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the PAGA Member’s pro rata share of 35% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 “LWDA PAGA Payment” means the 65% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “PAGA Member” means any non-exempt hourly employee who works or worked for Kendo in California at any time during the PAGA Period.
- 1.31 “PAGA Pay Period” means any Pay Period during which a PAGA Member worked for Kendo on at least one day in California during the PAGA Period.
- 1.32 “PAGA Period” means the period from November 20, 2023 through December 18, 2025, or the date the Court enters an order granting preliminary approval of the Settlement, whichever occurs first.
- 1.33 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*).
- 1.34 “PAGA Notice” means Plaintiff’s November 20, 2024 letter to Kendo and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.35 “PAGA Penalties” means the total amount of \$10,000 as PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 35% to the PAGA Members (\$3,500) and 65% to the LWDA (\$6,500) in settlement of the PAGA claims.
- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiff” means Rebecca Kurkhill, the named plaintiff in the Action.
- 1.38 “Preliminary Approval” means the Court’s Order granting preliminary approval of the Settlement.
- 1.39 “Preliminary Approval Order” means the Court’s Order granting preliminary approval of the Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42 “Released Parties” means Kendo Holdings Inc. and any of each of its former and present directors, officers, shareholders, partners, owners, managers, attorneys, insurers, predecessors, successors, assigns, parents (including LVMH Moët Hennessy Louis Vuitton S.E.), subsidiaries, divisions (including Lip Lab), franchises, assigns, affiliates, agents, current and former employees, representative, related entities, and all persons and entities acting by, through, under, or in concert with any of them.
- 1.43 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 “Response Deadline” means forty-five (45) days after the Administrator mails the Notice to Class Members and PAGA Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are re-sent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired.
- 1.45 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

- 2.1 On December 6, 2024, Plaintiff filed a class action complaint against Kendo in Los Angeles County Superior Court, alleging: (1) Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay; (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest Breaks; (4) Failure to Indemnify;

(5) Wage Statement Penalties; (6) Waiting Time Penalties; and (7) Unfair Competition. On January 29, 2025, Plaintiff filed a First Amended Complaint adding an eighth cause of action for civil penalties under PAGA. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). Kendo denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.

- 2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Kendo and the LWDA by sending the PAGA Notice.
- 2.3 On December 23, 2024, the Court issued a Minute Order designating the Action as Complex, and instructing the Parties to file a Notice of Appearance in lieu of an Answer or other responsive pleading until further Order of the Court.
- 2.4 On March 3, 2025, Defendant filed a Notice of Appearance.
- 2.5 On May 7, 2025, the Court granted the Parties’ Joint Stipulation to stay proceedings pending mediation.
- 2.6 On September 5, 2025, the Parties participated in a mediation with mediator Gail Glick, Esq., which led to this Agreement to settle the Action.
- 2.7 Prior to mediation, Plaintiff obtained, through informal discovery, an initial sampling of time and corresponding pay records belonging to approximately 20% of Class Members, (and was later provided with time and pay records for the entire Class Member population through June 2025), as well as relevant Kendo policies, Plaintiff’s time and payroll records and wage statements, the total number of Kendo employees who worked in California during the Class Period, the total number of pay periods worked in California by those Kendo employees during the Class Period, the total number of Kendo employees who worked in California during the PAGA Period, the total number of pay periods worked in California by those Kendo employees during the PAGA Period, and the total number of Kendo employees who were terminated during the Class Period.
- 2.8 The Court has not granted class certification.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Kendo promises to pay Three Hundred Seventy Five Thousand Dollars and Zero Cents (\$375,000.00), and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Kendo has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or

requiring Participating Class Members or PAGA Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Kendo.

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

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

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than \$125,000 (representing 33 and 1/3% of the Gross Settlement Amount), and a Class Counsel Litigation Expenses Payment of not more than \$30,000. Kendo will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other plaintiff's Counsel arising from any claim to any portion of any Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Kendo harmless, and indemnifies Kendo, from any dispute or controversy regarding any division or sharing of any of these Payments. The Settlement shall remain binding even if the Court approves a lesser amount of Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment.

- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$10,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment of less than \$10,000, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 To Each Participating Class Member: An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the total number of pay periods worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's pay periods.
- 3.2.4.1 Tax Allocation of Individual Class Payments. 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 90% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for all interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
- 3.2.5 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis according to their respective pay periods.
- 3.2.6 To the LWDA and Covered Employees: PAGA Penalties in the amount of \$10,000 will be paid from the Gross Settlement Amount, with 65% allocated to the LWDA PAGA Payment and 35% allocated to the Individual PAGA Payments.
- 3.2.6.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the PAGA Member's 35% share of PAGA Penalties (\$3,500) by the total number of PAGA Period Pay Periods worked by all PAGA Members during the PAGA Period and (b) multiplying the result by each PAGA Member's PAGA Period Pay Periods. PAGA Members assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
- 3.2.6.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net

Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Class Pay Periods and PAGA Member Pay Periods. Based on a review of its records, Kendo estimates that, as of June 21, 2025, there were 200 Class Members who collectively worked a total of 5,062 pay periods and 109 PAGA Members who worked a total of 2,311 PAGA Pay Periods.
- 4.2 Class Data. No later than twenty-one (21) calendar days after the Court grants Preliminary Approval of the Settlement, Kendo will deliver the Class Data to the Administrator in a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Kendo has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Kendo must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 Funding of Gross Settlement Amount. Kendo shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Kendo's share of payroll taxes by transmitting the funds to the Administrator no later than forty-five (45) days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within fifteen (15) days after Kendo funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than one hundred eighty (180) days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all PAGA Members

including Non-Participating Class Members who qualify as PAGA Members (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without a USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Kendo to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

- 5.1 Release by Plaintiff. In consideration of Plaintiff's awarded Class Representative Service Payment, Plaintiff's Individual Class Payment, and the other terms and conditions of the Settlement, as of the date the Settlement becomes Final and is fully funded, Plaintiff, on behalf of herself and her respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, releases any and all known and unknown claims that arose on or before the date she signs this agreement against Kendo and the Released Parties ("Plaintiff's Released Claims"). Plaintiff's Released Claims shall include but not be limited to any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses of any nature whatsoever from the beginning of time through the date Plaintiff signs this Agreement, known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to

Plaintiff's employment with any of the Released Parties, including those claims which could have been asserted in the Complaint, the Operative Complaint and/or LWDA letter, the compensation for that employment, and/or Plaintiff's relationship with the Released Parties before and during Plaintiff's employment with any of the Released Parties and through the date Plaintiff signs this Agreement. Expressly excluded from Plaintiff's release are any claims for workers' compensation benefits, unemployment insurance benefits, and any other claims that cannot be released by law.

- 5.2 Release by Participating Class Members. In consideration for their awarded Individual Class Payments, as of the date the Settlement becomes Final, all Participating Class Members release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, any and all claims against Kendo and the Released Parties that arise out of or reasonably relate to the claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from the same set of operative facts as those alleged in the Complaint, the Operative Complaint, and/or the applicable LWDA letter, including those claims which could have been asserted based on the facts alleged in the Complaint, the Operative Complaint, and/or LWDA letter, at any time during the Class Period. Such released claims include but are not limited to claims for failure to pay minimum wages, failure to pay overtime, failure to calculate any wages based on the regular rate of pay (including sick time or any other time off that must be paid based on the regular rate of pay), for meal period violations, for rest period violations, for wage statement violations, for failure to timely pay wages, for failure to reimburse business expenses, for failure to timely pay all final wages or waiting time penalties, statutory penalties, civil penalties, or other relief under the California Labor Code, relief from unfair competition under California Business and Professions Code section 17200 et seq.; attorneys' fees and costs; and interest (the "Participating Class Members' Released Claims").
- 5.3 Release by PAGA Members. In consideration for their awarded Individual PAGA Payments, as of the date the Settlement becomes Final, all PAGA Members release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns any and all claims for civil penalties under PAGA against Kendo and the Released Parties that arise out of or reasonably relate to the claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from the same set of operative facts as those alleged in the Complaint, the Operative Complaint, and/or the applicable LWDA letter, including those claims which could have been asserted based on the facts alleged in the Complaint, the Operative Complaint, and/or LWDA letter, at any time during the PAGA Period. Such released claims include but are not limited to claims for failure to pay minimum wages, failure to pay overtime, failure to calculate any wages based on the regular rate of pay (including sick time or any other time off that must be paid based on the regular rate of pay), for meal period violations, for rest period violations, for wage statement violations, for failure to timely pay wages, for failure to reimburse business expenses, for failure to timely pay all final wages or waiting time penalties, statutory penalties, civil penalties, or other relief under the

California Labor Code, relief from unfair competition under California Business and Professions Code section 17200 et seq.; attorneys' fees and costs; and interest (the "Released PAGA Claims"). All PAGA Members who worked for Kendo during the PAGA Period will release the PAGA claims described herein and will receive a portion of the amount set aside as PAGA penalties, regardless of whether they opt out of the release of the Class Claims.

- 5.4 With respect to the Plaintiff's Released Claims only, the Parties stipulate and agree that the Plaintiff shall have, by operation of the judgment and approval order entered by the Court, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff shall be deemed to have acknowledged that this Settlement Agreement is intended to waive and release all released claims that she does not know or suspect to exist in her favor at the time of the approval of this Settlement Agreement.

6. **MOTION FOR PRELIMINARY APPROVAL.** Within a reasonable time, Plaintiff will move for an order granting preliminary approval of the Settlement and approval of the PAGA Settlement ("Motion for Preliminary Approval") that complies with the Court's current checklist for preliminary approvals.
- 6.1 **Plaintiff's Responsibilities.** At least seven (7) days prior to filing the Motion for Preliminary Approval, Plaintiff will prepare and deliver to Defense Counsel a draft Motion for Preliminary Approval; a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; a draft proposed Class Notice; and a draft of any supporting declarations, including a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting its willingness to serve; competency; operative procedure for protecting the security of Class Data; amounts of insurance coverage for any data breach, and defalcation of funds or other misfeasance.
- 6.2 **Responsibilities of Counsel.** Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than forty-five (45) days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval order to the Administrator.

- 6.3 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.

7. **SETTLEMENT ADMINISTRATION.**

- 7.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for the Administration Expense Payment. 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. Following its deposit of the Gross Settlement Amount to the Administrator, Kendo and Defense Counsel shall have no responsibility, financial obligation, or liability whatsoever with respect to any payments to the LWDA, PAGA Members, Class Members, Class Counsel, Plaintiff, and all other recipients of funds and/or beneficiaries of the Settlement, including but not limited to all calculations and disbursements of funds, and payment of any taxes or costs relating thereto.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund under U.S. Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Class Pay Periods, and PAGA Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than fifteen (15) 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 Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment

and/or Individual PAGA Payment payable to the Class Member, and the number of Class Pay Periods and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 7.4.3 No later than five (5) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members' written objections, Challenges to Class Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline when re-mailing the Class Notice.
- 7.4.5 If the Administrator, Kendo or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received the Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement no later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later. If any persons are included as Class Members, the addition of these individuals and any pay periods they worked shall have no effect on the Escalation Clause set forth in Paragraph 8.

7.5 Requests for Exclusion (Opt-Outs)

- 7.5.1 Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion no later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release under Paragraph 5.2 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 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. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are PAGA Members are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment. PAGA Members shall not have an opportunity to opt out of receiving an Individual PAGA Payment or release the Released PAGA Claims.
- 7.5.5 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. No later than ten (10) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid). Class Counsel will not receive the names or any other identifying information of Class Members who have timely submitted valid Requests for Exclusion, but Class Counsel may receive the total number of such individuals.
- 7.6 Challenges to Calculation of Class Pay Periods. Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Pay Periods allocated to the Class Member in the Class Notice. The Class Member 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 Class 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 Class 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 Class Pay Periods to Defense Counsel only and the Administrator's determination of the challenges.

7.7 Objections to Settlement.

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

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so no later than forty-five (45) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).

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

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

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

7.8.2 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned

undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Class Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all objections received.

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

7.8.4 Administrator’s Declaration. No later than fourteen (14) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notices, the number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), and the number of written objections. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

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

8. **ESCALATION CLAUSE.** As set forth in Paragraph 4.1, Kendo estimates that, as of June 21, 2025, the Class Members collectively worked a total of 5,062 Pay Periods. In the event that the Class Data reflects that the number of pay periods as of June 21, 2025 exceeds 5,062 pay periods by more than 10%, either the Gross Settlement Amount shall be proportionately increased, on a percentage basis, to the extent that such pay periods exceed the 10% threshold, or the Class Period and PAGA Period shall be proportionately decreased, on a percentage basis, to the extent that such pay periods exceed the 10% threshold. If the Escalator Clause is triggered, Defendant shall be entitled to select either an increase in the Gross Settlement Amount or a decrease in the time periods covered by the Class Period and PAGA Period. For example, if the number of pay periods as of June 21, 2025 exceeds 5,062 by 11%, then

Defendant would elect to either increase the Gross Settlement Amount by 1% or decrease the time periods covered by the Class Period and PAGA Period by 1%. If Defendant selects to decrease the time periods covered by the Class and PAGA period, the time period will be decreased by deducting time from the start of the periods rather than the end of the time periods. If Defendant selects to increase the Gross Settlement Amount, the Class Counsel Fees Payment, Class Representative Service Payment, and PAGA Penalties will increase proportionally according to the number of additional pay periods. If Defendant selects to decrease the Class Period and PAGA Period, the Parties will revise the Class Notice to include the shorter Class and PAGA Periods.

9. **KENDO'S RIGHT TO WITHDRAW.** If ten percent (10%) or more of the Class Members, or a number of Class Members whose Individual Class Payments represent ten percent (10%) or more of the total of all Individual Class Payments, validly elect not to participate in the Settlement, Kendo will have the right (but not the obligation) to rescind the Settlement, and the Settlement and all actions taken in its furtherance will be null and void. Kendo must exercise this right within fifteen (15) days after the Settlement Administrator notifies the Parties of the number of opt-outs, which the Settlement Administrator will do within ten (10) days after the deadline for submission of opt-outs. If Kendo exercises the right to rescind, it will be responsible for the costs of administration of the Settlement incurred through that time.
10. **MOTION FOR FINAL APPROVAL.** No later than sixteen (16) court days before the scheduled Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (I), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). At least seven (7) days prior to filing the Motion for Final Approval, Plaintiff will prepare and deliver to Defense Counsel drafts of the Motion for Final Approval and all supporting documents.
 - 10.1 **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.
 - 10.2 **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 attempt to address the Court's concerns. 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.
 - 10.3 **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.

- 10.4 Waiver of Right to Appeal. The Parties and all Participating Class Members who did not object to the Settlement as provided in this Agreement waive all appeals from the Final Approval of the Settlement unless the Court materially modifies the Settlement, except that Plaintiff and Class Counsel may appeal from an order by the Court that reduces the amounts sought for the Class Representative Payment or the Class Counsel Fees or Expenses Payment. Such an order or affirmance of such an order will not entitle Plaintiff or the Class to void the Settlement. Kendo's payment obligation under the Settlement will be suspended pending an appeal of the Judgment.
- 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to attempt to address the appellate court's concerns, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount remains unchanged.
11. **AMENDED JUDGMENT.** If an amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.
12. **ADDITIONAL PROVISIONS.**
- 12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Kendo that any of the allegations in the Operative Complaint have merit or that Kendo has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Kendo's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, grant Final Approval, or enter Judgment, Kendo reserves the right to contest certification of any class for any reason, Kendo reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Kendo's defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 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.
- 12.4 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Kendo, 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.
- 12.5 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 as agreed by the Parties, 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.
- 12.6 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 any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Parties in this Settlement.
- 12.7 No Tax Advice. Neither Plaintiff, Class Counsel, Kendo 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.
- 12.8 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.
- 12.9 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

- 12.10 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the state of California, without regard to conflict of law principles.
- 12.11 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.
- 12.12 Confidentiality/No Publicity. Plaintiff and her attorneys agree not to issue any press or other media releases or talk to the press or media regarding the Settlement, and Plaintiff's attorneys agree not to publicize the Settlement on their website or social media. In addition, prior to filing of the Motion for Preliminary Approval, Plaintiff and her attorneys will not have any communication with anyone other than family members, clients, Class Members, financial advisors, retained experts, and vendors related to settlement administration, regarding the Settlement. If, before the filing of the Motion for Preliminary Approval, Plaintiff or her attorneys disclose to any unauthorized party (a) that a settlement has been reached or (b) any of the terms of the Settlement except as required by law or to effect the Settlement, Kendo may (but is not obligated to) rescind the Settlement, rendering it null and void.
- 12.13 Use and Return of Class Data. Information provided to Class Counsel pursuant to California Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Kendo 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. No later than ninety (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 Kendo unless, prior to the Court's discharge of the Administrator's obligation, Kendo makes a written request to Class Counsel for the return, rather than the destruction of, Class Data.
- 12.14 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.
- 12.15 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 weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter:
- 12.16 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff and the Settlement Class:

David G. Spivak
david@spivaklaw.com
Caroline Tahmassian
caroline@spivaklaw.com
THE SPIVAK LAW FIRM
8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Kendo Holdings, Inc.:

Kent J. Sprinkle
ksprinkle@cdflaborlaw.com
Candace DesBaillets
cdesbaillets@cdflaborlaw.com
Sophia Jimenez
sjimenez@cdflaborlaw.com
CDF LABOR LAW LLP
4660 La Jolla Village Drive, Suite 740
San Diego, California 92122

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

12.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement, the Action shall remain stayed, except to effectuate the terms of this Agreement.

10 / 23 / 2025

Dated: October __, 2025



Plaintiff Rebecca Kurkhill

Dated: October __, 2025

Kendo Holdings Inc.

Sierra Brandis, SVP & General Counsel

To Plaintiff and the Settlement Class:

David G. Spivak
david@spivaklaw.com
Caroline Tahmassian
caroline@spivaklaw.com
THE SPIVAK LAW FIRM
8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Kendo Holdings, Inc.:

Kent J. Sprinkle
ksprinkle@cdflaborlaw.com
Candace DesBaillets
cdesbaillets@cdflaborlaw.com
Sophia Jimenez
sjimenez@cdflaborlaw.com
CDF LABOR LAW LLP
4660 La Jolla Village Drive, Suite 740
San Diego, California 92122

- 12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement, the Action shall remain stayed, except to effectuate the terms of this Agreement.

Dated: October __, 2025

Plaintiff Rebecca Kurkhill

Dated: October 23, 2025

Kendo Holdings Inc.

10/23/2025

DocuSigned by:
Sierra Brandis
4DC884785768492...

Sierra Brandis, SVP & General Counsel

Approved As to Form:

10 / 23 / 2025

Dated: October __, 2025

THE SPIVAK LAW FIRM.



David G. Spivak
Attorneys for Plaintiff

Dated: October __, 2025

CDF LABOR LAW LLP

Kent J. Sprinkle
Attorneys for Defendant Kendo Holdings Inc.

Approved As to Form:

Dated: October __, 2025

THE SPIVAK LAW FIRM.

David G. Spivak
Attorneys for Plaintiff

Dated: October 23, 2025

CDF LABOR LAW LLP



Kent J. Sprinkle
Attorneys for Defendant Kendo Holdings Inc.

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF LOS ANGELES

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

(Rebecca Kurkhill v. Kendo Holdings, Inc., Case No. 24STCV32366)

*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 Kendo Holdings Inc. (“Kendo”) for alleged wage and hour violations. The Action was filed by a former Kendo employee, Rebecca Kurkhill (“Plaintiff”) and seeks payment of (1) back wages, statutory penalties, and interest for a class of non-exempt hourly employees who work or worked for Kendo in California during the Class Period (December 6, 2020 through [December 18, 2025, or the date the Court grants preliminary approval of the Settlement, whichever occurs first, or the shorter Class Period end date if Escalator Clause is triggered and Defendant selects to decrease the Class Period]) (“Class Members”); and (2) penalties under the California Private Attorneys General Act (“PAGA”), for all non-exempt hourly employees who work or worked for Kendo in California during the PAGA Period (November 20, 2023 through [December 18, 2025, or the date the Court grants preliminary approval of the Settlement, whichever occurs first, or the shorter PAGA Period end date if Escalator Clause is triggered and Defendant selects to decrease the Class Period]) (“PAGA Members”). Kendo denies the allegations in the Action and denies that any employee is owed back wages, statutory penalties, interest, or penalties. The Court has not made any rulings on the merits of the Action.

The proposed Settlement has two main parts: (1) a Class Settlement providing Class Members with Individual Class Payments, and (2) a PAGA Settlement providing PAGA Members Individual PAGA Payments and providing a payment to the California Labor and Workforce Development Agency (“LWDA”).

Based on Kendo’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____.** 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 Kendo’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Kendo’s records showing that **you were employed by Kendo and that you worked _____ pay periods** during the Class Period and **you worked _____ pay periods** during the PAGA Period. If you believe that you worked more pay periods during the Class Period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

If you worked for Kendo during the Class Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Kendo.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Kendo. You cannot opt-out of the PAGA portion of the proposed Settlement, and thus, if you are a PAGA member, you will receive an Individual PAGA Payment regardless of whether you opt out of the Class Settlement.

Kendo 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 wage claims against Kendo 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 _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Kendo must pay Individual PAGA Payments to all PAGA Members and the PAGA Members must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. 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. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many pay periods you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Pay Periods and number of PAGA Pay Periods you worked according to Kendo's records is stated on the first page of this Notice. If you disagree with number of Class Period Pay Periods you worked, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Kendo employee. The Action alleges violations of certain California labor laws, asserting claims based on Kendo's alleged: (1) failure to pay all wages earned for all hours worked and other compensable hours at the correct rates of pay; (2) meal break violations; (3) rest break violations; (4) failure to reimburse necessary business expenses; (5) failure to provide

accurate itemized wage statements; (6) failure to timely pay wages; and (7) violation of California's Unfair Competition Law. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698 *et seq.*) ("PAGA"). Plaintiff is represented by attorneys in the Action: David G. Spivak and Caroline Tahmassian of The Spivak Law Firm ("Class Counsel.")

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

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

The Court has made no determination about whether Kendo or Plaintiff is correct on the merits. In the meantime, Plaintiff and Kendo hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an agreement to settle the case rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Kendo have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Kendo does not admit any violations or concede the merit of any claims.

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

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

1. Kendo Will Pay \$375,000 as the Gross Settlement Amount (Gross Settlement). Kendo has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Kendo will fund the Gross Settlement not more than 45 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the

Final Approval Hearing:

- A. Up to \$125,000 (33 and 1/3% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$30,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$15,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$10,000 to the Administrator for services administering the Settlement.
- D. Up to \$10,000 for PAGA Penalties, allocated 65% to the LWDA PAGA Payment and 35% in Individual PAGA Payments to the PAGA Members based on their PAGA Pay Periods.

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

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Pay Periods.
- 4. Taxes Owed on Payments to Class Members. Plaintiff and Kendo are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages ("Wage Portion") and 90% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Kendo will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

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

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, no later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ 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. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against Kendo.

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

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Kendo have agreed that, in either case, the Settlement will be void: Kendo will not pay any money and Class Members will not release any claims against Kendo.
8. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Kendo has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Kendo or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

All Participating Class Members release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, any and all claims against Kendo and the Released Parties that arise out of or reasonably relate to the claims, rights,

demands, liabilities, and causes of action, whether known or unknown, arising from the same set of operative facts as those alleged in the Complaint, the Operative Complaint, and/or the applicable LWDA letter, including those claims which could have been asserted based on the facts alleged in the Complaint, the Operative Complaint, and/or LWDA letter, at any time during the Class Period. Such released claims include but are not limited to claims for failure to pay minimum wages, failure to pay overtime, failure to calculate any wages based on the regular rate of pay (including sick time or any other time off that must be paid based on the regular rate of pay), for meal period violations, for rest period violations, for wage statement violations, for failure to timely pay wages, for failure to reimburse business expenses, for failure to timely pay all final wages or waiting time penalties, statutory penalties, civil penalties, or other relief under the California Labor Code, relief from unfair competition under California Business and Professions Code section 17200 et seq.; attorneys' fees and costs; and interest.

10. PAGA Members' PAGA Release. After the Judgment is final and Kendo has fully funded the Gross Settlement and separately paid all employer payroll taxes, all PAGA Members will be barred from asserting PAGA claims against Kendo, whether or not they exclude themselves from the Settlement. This means that all PAGA Members, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Kendo or its related entities based on the facts alleged in the Action.

The PAGA Members, including all Participating and Non-Participating Class Members, will be bound by the following release:

All PAGA Members release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns any and all claims for civil penalties under PAGA against Kendo and the Released Parties that arise out of or reasonably relate to the claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from the same set of operative facts as those alleged in the Complaint, the Operative Complaint, and/or the applicable LWDA letter, including those claims which could have been asserted based on the facts alleged in the Complaint, the Operative Complaint, and/or LWDA letter, at any time during the PAGA Period. Such released claims include but are not limited to claims for failure to pay minimum wages, failure to pay overtime, failure to calculate any wages based on the regular rate of pay (including sick time or any other time off that must be paid based on the regular rate of pay), for meal period violations, for rest period violations, for wage statement violations, for failure to timely pay wages, for failure to reimburse business expenses, for failure to timely pay all final wages or waiting time penalties, statutory penalties, civil penalties, or other relief under the California Labor Code, relief from unfair competition under California Business and Professions Code section 17200 et seq.; attorneys' fees and costs; and interest.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of pay periods worked by all Participating Class Members, and (b) multiplying the result by the number of pay periods worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$3,500 (35% share of PAGA Penalties) by the total number of PAGA Pay Periods worked by all PAGA Members, and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual PAGA Member.
3. Workweek/Pay Period Challenges. The number of Class Pay Periods you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Kendo's records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of Class Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

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

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

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

Submit 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. 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 *Rebecca Kurkhill v. Kendo Holdings, Inc.*, Case No. 24STCV32366, 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. **The Administrator must be sent your request to be excluded by [redacted], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

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

[URL] or the Court's website (<https://www.lacourt.ca.gov>)

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses, and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [redacted].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Rebecca Kurkhill v. Kendo Holdings, Inc.*, Case No. 24STCV32366, and include your name, current address, telephone number, and approximate dates of employment for Kendo and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [redacted] at [time] in Department 17 of the Los Angeles County Superior Court, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the Judge will decide whether to grant Final Approval of the Settlement and how much of the Gross

Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comments from objectors, Class Counsel, and Defense Counsel before making a decision. You can attend (or hire a lawyer, at your own expense, to attend) either personally or virtually via Zoom. 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 [URL] 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 Kendo 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 [entity's] website at [URL]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Court website by going to (<https://www.lacourt.ca.gov>) and entering the Case Number for the Action, Case No. 24STCV32366. You can also make an appointment to personally review court documents in the Clerk's Office at the Spring Street Courthouse by calling (210) 310-7017.

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

Class Counsel:

David G. Spivak
david@spivaklaw.com
Caroline Tahmassian
caroline@spivaklaw.com
THE SPIVAK LAW FIRM
8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

Settlement Administrator:

[INSERT
ADMINISTRATOR
CONTACT INFO HERE]

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 for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT 2



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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

Mail
Office
Tel
Fax
Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

November 20, 2024

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

Re: Rebecca Kurkhill / Kendo

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Rebecca Kurkhill (hereafter “Kurkhill” or “Complainant”) provides notice that Kendo Holdings Inc., and related entities (collectively “the Kendo Employers” or “the Employers”) violated her rights and those of all other individuals the Kendo Employers have employed or otherwise contracted with in California as hourly, non-exempt, including salespersons and keyholders, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and other Labor Code statutes and related employee protections. On behalf of herself and all other Aggrieved Employees, Kurkhill hereby provides this notice to the Labor & Workforce Development Agency and the Kendo Employers and their agents and representatives.

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

///

Statement of Facts

On approximately March 24, 2023, the Kendo Employers began to employ Kurkhill in Los Angeles in the position of salesperson and keyholder. The Kendo Employers continuously employed her in that capacity until on or about July 15, 2024 when her employment ended.

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

The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Kendo Employers required Kurkhill and the other Aggrieved Employees to work off-the-clock and without pay. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods.

The Kendo Employers failed to compensate Kurkhill 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 Kendo Employers required Kurkhill and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked overtime hours.

The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Kendo Employers required Kurkhill and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked doubletime hours.

At all relevant times, the Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees with all timely, 30-minute, off-duty meal periods. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods. The Kendo Employers also failed to pay premium wages for days on which they failed to provide Kurkhill and all of the other Aggrieved Employees with meal periods as required by law. The Kendo Employers instructed their managers to edit Kurkhill and the other Aggrieved Employees' time records to create the appearance of timely meal periods. Kurkhill's manager, Veronica Magana, often edited Kurkhill's time records to create the appearance of timely meal periods. For example, on July 4, 2024, due to her workload, Kurkhill was not able to take a full 30-minute meal period. Veronica Magana was aware of this fact. However, instead of paying Kurkhill premium wages for that day, she edited Kurkhill's time records to show that she took a meal period of exactly 30 minutes.

At all relevant times, the Kendo Employers failed to authorize and permit Kurkhill and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Kendo Employers never authorized, scheduled, or permitted Kurkhill and all of the other Aggrieved Employees to take any rest breaks. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through rest breaks. The Kendo Employers also failed to pay premium wages for days on which they failed to authorize and permit Kurkhill and all of the other Aggrieved Employees to take rest breaks as required by law.

The Kendo Employers unlawfully deducted wages belonging to Kurkhill and all of the other Aggrieved Employees. The Kendo Employers deducted hours that Kurkhill and the other Aggrieved Employees spent in on-duty meal periods.

At all relevant times, the Kendo Employers failed to issue to Kurkhill 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 Kendo Employers knowingly and intentionally failed to state on the wage statements they issued to Kurkhill 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 related compensation.

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

At all relevant times, the Kendo Employers required Kurkhill and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Kendo Employers required Kurkhill and all of the other Aggrieved Employees to supply mobile phone to perform their job duties, including receiving and responding to communications from management and work scheduling. The Kendo Employers also required Kurkhill and all of the other Aggrieved Employees to pay for their own parking and did not provide them with transportation to the worksite. The Kendo Employers did not provide these items and did not reimburse Kurkhill and the other Aggrieved Employees for these items, nor did the Kendo Employers reimburse Kurkhill and the other Aggrieved Employees for mobile phone service bills.

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

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

- (a) The Kendo Employers failed to pay Kurkhill 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 Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Kendo Employers failed to authorize and permit Kurkhill and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees at one hour's pay for each day in which the Kendo

Employers failed to provide them with one or more meal periods as required by law;

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

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

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage

Order, § 2(H). At all relevant times during the applicable limitations period, the Kendo Employers, Kurkhill, and all of the Aggrieved Employees were covered by the Wage Order because the Kendo Employers operated, and Kurkhill, and all of the Aggrieved Employees worked for, one or more establishments operated as lip stick and other related products sales businesses. Accordingly, Kurkhill and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

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

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

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

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

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

The Kendo Employers required Kurkhill and the other Aggrieved Employees to work off-the-clock and without pay. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods.

The Kendo Employers required Kurkhill and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked overtime hours.

The Kendo Employers required Kurkhill and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked doubletime hours.

At all relevant times during the applicable limitations period, the Kendo Employers failed to compensate Kurkhill 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, Kurkhill now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

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

sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

In addition, Labor Code section 226.7 states:

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

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

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

At all relevant times, the Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees with all timely meal periods. The Kendo Employers denied Kurkhill and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods. Furthermore, the Kendo Employers failed to pay premium wages for days on which they failed to provide Kurkhill and all of the other Aggrieved Employees with timely meal periods. Accordingly, Kurkhill now seeks civil penalties for these Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

Section 2(G) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

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

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

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

As discussed above, the Kendo Employers failed to authorize and permit Kurkhill 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 Kendo Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through rest breaks. Moreover, the Kendo Employers failed to pay Kurkhill and all of the other Aggrieved Employees premium wages on workdays the Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Kurkhill now seeks civil penalties for these Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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 Kendo Employers deducted wages from the wages earned by Kurkhill and all of the other Aggrieved Employees in violation of Labor Code § 221. Accordingly, Kurkhill seeks civil penalties on behalf of herself 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 and Complete 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, complete, 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 Kendo 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 Kendo Employers failed to state in the wage statements they issued to Kurkhill 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 Kendo Employers knowingly and intentionally failed to state on the wage statements they issued to Kurkhill and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum, regular, overtime and doubletime wages, and all premium wages earned for missed meal and rest breaks, and related compensation. Accordingly, Kurkhill seeks civil penalties for the Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during

which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

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

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

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

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

The Kendo Employers failed to pay Kurkhill 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 Kurkhill, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. By failing to pay Kurkhill and all of the other Aggrieved Employees as set forth above at the end of employment, the Kendo Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Kurkhill seeks civil penalties from the Kendo 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 Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

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

Additionally, the Wage Order states,

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

...

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

Wage Order, §§ 9(A) and (B).

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

At all relevant times, the Kendo Employers required Kurkhill and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Kendo Employers required Kurkhill and all of the other Aggrieved Employees to supply mobile phone to perform their job duties, including receiving and responding to communications from management and work scheduling. The Kendo Employers also required Kurkhill and all of the other Aggrieved Employees to pay for their own parking and did not provide them with transportation to the worksite. The Kendo Employers did not provide these items and did not reimburse Kurkhill and the other Aggrieved Employees for these items, nor did the Kendo Employers reimburse Kurkhill and the other Aggrieved Employees for mobile phone service bills. Accordingly, Kurkhill seeks civil penalties for these Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows:

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

///

///

Failure to 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 Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including, and related compensation. As a result, the Kendo Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Kurkhill and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Kurkhill seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

LWDA / The Kendo Employers

Re: Rebecca Kurkhill

November 20, 2024

Page 21 of 21

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

Conclusion

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

Sincerely,



David Glenn Spivak, Esq.

Caroline Tahmassian, Esq.

david@spivaklaw.com

caroline@spivaklaw.com

cc: Ms. Rebecca Kurkhill

Kendo Holdings Inc.

c/o Michael DiChiara, Esq.

333 Bloomfield Ave., Ste 305-4

Caldwell, NJ 07006-5166

Michael.dichiara.ext@lvmh.com

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 REBECCA KURKHILL, and all others similarly situated

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

13 REBECCA KURKHILL, on behalf of herself
14 and all others similarly situated, and the general
public,

15 *Plaintiff(s),*

16 vs.

17 KENDO HOLDINGS INC., a Delaware
18 corporation; and DOES 1–50, inclusive,

19 *Defendant(s).*
20
21
22
23
24
25
26
27
28

Electronically FILED by
Superior Court of California,
County of Los Angeles
12/06/2024 5:45 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Gnade, Deputy Clerk

Case No. **24STCV32366**

CLASS ACTION

COMPLAINT FOR:

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

JURY TRIAL DEMANDED



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

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

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants Kendo Holdings Inc., and Does 1
7 through 50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
9 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
10 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;

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 Rebecca Kurkhill is a resident of California.

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 is 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 6. 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 7. 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 8. 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 9. 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 10. **Class Definition:** The Class is defined as follows: All persons Defendants
26 employed in California as hourly, non-exempt employees, including, but not limited to,
27 salespersons and keyholders, individuals performing work comparable to the aforementioned,
28 compensated comparably to the aforementioned, and individuals in similar positions, at any time



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

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 wages;

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

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

14. **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.

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

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

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

IV. STATEMENT OF FACTS

18. The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis..." Wage Order, § 1. The Wage



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 Order defines “Mercantile Industry” to mean “any industry, business, or establishment operated
2 for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or
3 retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant
4 times during the applicable limitations period, Defendants, Kurkhill, and all of the Class Members
5 were covered by the Wage Order because Defendants operated, and Kurkhill, and all of the Class
6 Members worked for, one or more establishments operated as lip stick sales business.
7 Accordingly, Kurkhill and all of the other Class Members are entitled to the protections the Wage
8 Order provides.

9 19. On approximately March 24, 2023, Defendants began to employ Kurkhill in Los
10 Angeles in the position of salesperson and keyholder. Defendants continuously employed her in
11 that capacity until on or about July 15, 2024 when her employment ended.

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

16 21. At all relevant times, Defendants failed to compensate Plaintiff and all of the other
17 Class Members for all hours worked at the applicable minimum or regular rates of pay.
18 Defendants required Plaintiff and the other Class Members to work off-the-clock and without pay.
19 Defendants were under-staffed. They required Plaintiff and the other Class Members to adhere to
20 schedules and complete more time-sensitive tasks in a workday than they could without working
21 off-the-clock or by working through meal periods.

22 22. Defendants failed to compensate Plaintiff and all of the other Class Members at
23 the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the
24 first eight hours of the seventh day of the workweek. Defendants required Plaintiff and the other
25 Class Members to work over eight hours per day, over 40 hours per week, and on the seventh day
26 of the same workweek. In order to adhere to schedules and complete time sensitive tasks and
27 scheduling as described above, Plaintiff and the other Class Members worked through meal
28 periods on days they worked overtime hours.



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 23. Defendants failed to compensate Plaintiff and all of the other Class Members at
2 the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the
3 seventh day of the workweek. Defendants required Plaintiff and the other Class Members to work
4 over 12 hours per day and over eight hours on the seventh day of the same workweek. In order to
5 adhere to schedules and complete time sensitive tasks and scheduling as described above, Plaintiff
6 and the other Class Members worked through meal periods on days they worked doubletime
7 hours.

8 24. At all relevant times, Defendants failed to provide Plaintiff and all of the other
9 Class Members with all timely, 30-minute, off-duty meal periods. Defendants were under-staffed.
10 They required Plaintiff and the other Class Members to adhere to schedules and complete more
11 time-sensitive tasks in a workday than they could without working off-the-clock or by working
12 through meal periods. Defendants also failed to pay premium wages for days on which they failed
13 to provide Plaintiff and all of the other Class Members with meal periods as required by law.
14 Defendants instructed their managers to edit Plaintiff and the other Class Members' time records
15 to create the appearance of timely meal periods. Plaintiff's manager, Veronica Magana, often
16 edited Plaintiff's time records to create the appearance of timely meal periods. For example, on
17 July 4, 2024, due to her workload, Plaintiff was not able to take a full 30-minute meal period.
18 Veronica Magana was aware of this fact. However, instead of paying Plaintiff premium wages
19 for that day, she edited Plaintiff's time records to show that she took a meal period of exactly 30
20 minutes.

21 25. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
22 the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
23 or major portion thereof. Defendants never authorized, scheduled, or permitted Plaintiff and all
24 of the other Class Members to take any rest breaks. Defendants were under-staffed. They required
25 Plaintiff and the other Class Members to adhere to schedules and complete more time-sensitive
26 tasks in a workday than they could without working off-the-clock or by working through rest
27 breaks. Defendants also failed to pay premium wages for days on which they failed to authorize
28 and permit Plaintiff and all of the other Class Members to take rest breaks as required by law.



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 26. Defendants unlawfully deducted wages belonging to Plaintiff and all of the other
2 Class Members. Defendants deducted hours that Plaintiff and the other Class Members spent in
3 on-duty meal periods.

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

12 28. Defendants also failed to timely pay Plaintiff and all of the other Class Members
13 all earned wages as described above during and at the conclusion of employment.

14 29. At all relevant times, Defendants required Plaintiff and all of the other Class
15 Members to incur certain business expenses in the course of performing their duties. Defendants
16 required Plaintiff and all of the other Class Members to supply mobile phone to perform their job
17 duties, including receiving and responding to communications from management and work
18 scheduling. Defendants also required Plaintiff and all of the other Class Members to pay for their
19 own parking and did not provide them with transportation to the worksite. Defendants did not
20 provide these items and did not reimburse Plaintiff and the other Class Members for these items,
21 nor did Defendants reimburse Plaintiff and the other Class Members for mobile phone service
22 bills.

23 30. Defendants failed to maintain accurate employee records of Plaintiff and all of the
24 other Class Members

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

- 27 A. Not provided with all off duty meal periods;
28 B. Not authorized and permitted to take all rest break periods;



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

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

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

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

7 F. Not indemnified for all necessary business expenditures incurred during
8 the discharge of their duties;

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

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

12 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

25 35. Section 3 of the Wage Order states:

26 The following overtime provisions are applicable to employees 18 years of age or
27 over and to employees 16 or 17 years of age who are not required by law to attend
28 school and are not otherwise prohibited by law from engaging in the subject work.
Such employees shall not be employed more than eight (8) hours in any workday
or 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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
2 beyond eight (8) hours in any workday or more than six (6) days in any workweek
3 is permissible provided the employee is compensated for such overtime at not less
4 than:

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

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

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

18 37. Labor Code section 510 states:

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

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

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

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

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

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

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

21 **B. UNLAWFUL WAGE DEDUCTIONS**

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 law.

2 **SECOND CAUSE OF ACTION**
3 **FAILURE TO PROVIDE MEAL PERIODS**

4 **Lab. Code §§ 226.7 and 512**

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

6 48. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

10 50. In relevant part, California Labor Code § 1198 states:

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

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

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

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

28 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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

by mutual consent of the employer and the employee.

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

53. 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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

period is not provided.

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

55. As discussed above, Defendants intentionally failed to provide Plaintiff and the Class Members with all required, timely, 30-minute duty free meal periods in accordance with the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

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

57. 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.

58. 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.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

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

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

60. 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.

61. 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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

62. 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.

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

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

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

64. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
2 of work, or major fraction thereof.

3 65. As discussed above, at all relevant times, Defendants intentionally failed to
4 authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from
5 any work duties in accordance with the Wage Order. Furthermore, Defendants failed to pay
6 premium wages to Plaintiff and the Class Members for days on which they failed to authorize and
7 permit Plaintiff and the other Class Members to take timely rest periods.

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

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 California Labor Code § 226.7.

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

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

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO INDEMNIFY**

10 **Lab. Code § 2802**

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

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

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

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

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

20 76. As described above, the Defendants required Kurkhill and all of the other Class
21 Members to incur certain business expenses in the course of performing their duties. However,
22 the Defendants did not provide these items and did not reimburse Kurkhill and the other Class
23 members for these items.

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

28 78. By reason of the above, Plaintiff and the Class Members are entitled to



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 reimbursement for all necessary expenditures and losses and interest due and owing to within four
2 years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to
3 California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the members of the
4 Class seek reasonable attorney's fees pursuant to Labor Code § 2802(c).

5 **FIFTH CAUSE OF ACTION**

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

7 **Lab. Code § 226**

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

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

10 80. 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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 corresponding number of hours worked at each hourly rate by the employee.

2 81. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
3 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
4 the employer fails to provide accurate and complete information as required by California Labor
5 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
6 alone one or more of the following:

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

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

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

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

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

18 82. “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 83. 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 84. Defendants’ failure to provide Plaintiff and the other Class Members with accurate



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

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

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

14 86. Pursuant to California Labor Code § 226(e), Plaintiff and the class are entitled to
15 recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period
16 in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each
17 violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate
18 penalty of four thousand dollars (\$4,000) per class member, and are also entitled to an award of
19 costs and reasonable attorneys' fees.

20 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

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

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

6 91. Defendants failed to pay Plaintiff and all of the other Class Members whose
7 employment ended all of the earned but unpaid wages described above by the conclusion of their
8 employment with Defendants, including minimum wages, regular wages, overtime wages,
9 doubletime wages, unprovided meal period premium wages, unprovided rest break premium
10 wages, and other compensation.

11 92. By failing to pay such earned wages to Plaintiff and the Class Members,
12 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
13 § 201 or § 202.

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

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

22 **SEVENTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

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

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

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

27 96. At all relevant times during the applicable limitations period, Plaintiff and the
28 Class Members have been employees of Defendants and entitled to the benefits and protections



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 of the Business and Professions Code §§ 17200, *et seq.*

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

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

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

16 100. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
17 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
18 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

19 **V. PRAYER FOR RELIEF**

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

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

24 B. An order that Plaintiff be appointed class representative;

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

26 D. Unpaid wages, including minimum, regular, overtime, double-time,
27 missed meal period premium, and missed rest period premium wages;

28 E. Liquidated damages;



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- F. Statutory penalties, including waiting time penalties;
- G. Restitution;
- H. Declaratory relief;
- I. Actual damages;
- J. Pre-judgment interest;
- K. Costs of suit;
- L. Reasonable attorneys' fees; and
- M. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: December 6, 2024

By: 

DAVID G. SPIVAK
CAROLINE TAHMASSIAN,
Attorneys for Plaintiff(s), REBECCA
KURKHILL, and all others similarly
situated



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

EXHIBIT 4

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

10 Attorneys for Plaintiff(s),
 11 REBECCA KURKHILL, and all others similarly situated

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

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

15 REBECCA KURKHILL, on behalf of herself
 16 and all others similarly situated, and the general
 17 public, and as "Aggrieved Employees" on behalf
 18 of other "Aggrieved Employees" and the State
 19 of California under the Labor Code Private
 20 Attorneys General Act of 2004,

21 *Plaintiff(s),*

22 vs.

23 KENDO HOLDINGS INC., a Delaware
 24 corporation; and DOES 1-50, inclusive,

25 *Defendant(s).*

FILED
 Superior Court of California
 County of Los Angeles
 01/29/2025

David W. Stoyan, Executive Officer / Clerk of Court
 By: M. Arellanes Deputy

Case No.: 24STCV32366

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 Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



SPIVAK LAW
 EMPLOYEE RIGHTS

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

Office:
 1875 Century Park East
 7th Fl
 Los Angeles, CA 90067

1 Plaintiff, Rebecca Kurkhill (hereafter “Plaintiff” or “Kurkhill”), on behalf of herself and
2 all others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “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. 7-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Kendo Holdings
9 Inc., and Does 1 through 50, inclusive (collectively “Defendants”).

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

13 (A) Pay all wages, including minimum, regular, 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;

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 Rebecca Kurkhill is a resident of California. At all relevant times, Plaintiff
28 was an “employees” within the meaning of Title 8 California Code of Regulations Section 11070,



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 and an “aggrieved employee” within the meaning of California Labor Code § 2699(c).

2 3. Defendant Kendo Holdings Inc. is a corporation organized and existing under the
3 laws of Delaware and also a citizen of California based on Plaintiff’s information and belief.

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

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

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

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

24 **III. CLASS ALLEGATIONS**

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 a class action.

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

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

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

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

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

21 B. Whether Defendants unlawfully deducted wages from Class Members;

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

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

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

28 F. Whether Defendants knowingly and intentionally failed to provide the



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 class with accurate and complete itemized wage statements;

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

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

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

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

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. STATEMENT OF FACTS

17. The Wage Order applies to “all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage Order defines “Mercantile Industry” to mean “any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant times during the applicable limitations period, Defendants, Kurkhill, and all of the Class Members were covered by the Wage Order because Defendants operated, and Kurkhill, and all of the Class Members worked for, one or more establishments operated as lip stick sales business. Accordingly, Kurkhill and all of the other Class Members are entitled to the protections the Wage Order provides.

18. On approximately March 24, 2023, Defendants began to employ Kurkhill in Los Angeles in the position of salesperson and keyholder. Defendants continuously employed her in that capacity until on or about July 15, 2024 when her employment ended.

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

20. At all relevant times, Defendants failed to compensate Plaintiff and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Defendants required Plaintiff and the other Class Members to work off-the-clock and without pay. Defendants were under-staffed. They required Plaintiff and the other Class Members to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods.

21. Defendants failed to compensate Plaintiff and all of the other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 first eight hours of the seventh day of the workweek. Defendants required Plaintiff and the other
2 Class Members to work over eight hours per day, over 40 hours per week, and on the seventh day
3 of the same workweek. In order to adhere to schedules and complete time sensitive tasks and
4 scheduling as described above, Plaintiff and the other Class Members worked through meal
5 periods on days they worked overtime hours.

6 22. Defendants failed to compensate Plaintiff and all of the other Class Members at
7 the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the
8 seventh day of the workweek. Defendants required Plaintiff and the other Class Members to work
9 over 12 hours per day and over eight hours on the seventh day of the same workweek. In order to
10 adhere to schedules and complete time sensitive tasks and scheduling as described above, Plaintiff
11 and the other Class Members worked through meal periods on days they worked doubletime
12 hours.

13 23. At all relevant times, Defendants failed to provide Plaintiff and all of the other
14 Class Members with all timely, 30-minute, off-duty meal periods. Defendants were under-staffed.
15 They required Plaintiff and the other Class Members to adhere to schedules and complete more
16 time-sensitive tasks in a workday than they could without working off-the-clock or by working
17 through meal periods. Defendants also failed to pay premium wages for days on which they failed
18 to provide Plaintiff and all of the other Class Members with meal periods as required by law.
19 Defendants instructed their managers to edit Plaintiff and the other Class Members' time records
20 to create the appearance of timely meal periods. Plaintiff's manager, Veronica Magana, often
21 edited Plaintiff's time records to create the appearance of timely meal periods. For example, on
22 July 4, 2024, due to her workload, Plaintiff was not able to take a full 30-minute meal period.
23 Veronica Magana was aware of this fact. However, instead of paying Plaintiff premium wages
24 for that day, she edited Plaintiff's time records to show that she took a meal period of exactly 30
25 minutes.

26 24. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
27 the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
28 or major portion thereof. Defendants never authorized, scheduled, or permitted Plaintiff and all



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 of the other Class Members to take any rest breaks. Defendants were under-staffed. They required
2 Plaintiff and the other Class Members to adhere to schedules and complete more time-sensitive
3 tasks in a workday than they could without working off-the-clock or by working through rest
4 breaks. Defendants also failed to pay premium wages for days on which they failed to authorize
5 and permit Plaintiff and all of the other Class Members to take rest breaks as required by law.

6 25. Defendants unlawfully deducted wages belonging to Plaintiff and all of the other
7 Class Members. Defendants deducted hours that Plaintiff and the other Class Members spent in
8 on-duty meal periods.

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

17 27. Defendants also failed to timely pay Plaintiff and all of the other Class Members
18 all earned wages as described above during and at the conclusion of employment.

19 28. At all relevant times, Defendants required Plaintiff and all of the other Class
20 Members to incur certain business expenses in the course of performing their duties. Defendants
21 required Plaintiff and all of the other Class Members to supply mobile phone to perform their job
22 duties, including receiving and responding to communications from management and work
23 scheduling. Defendants also required Plaintiff and all of the other Class Members to pay for their
24 own parking and did not provide them with transportation to the worksite. Defendants did not
25 provide these items and did not reimburse Plaintiff and the other Class Members for these items,
26 nor did Defendants reimburse Plaintiff and the other Class Members for mobile phone service
27 bills.

28 29. Defendants failed to maintain accurate employee records of Plaintiff and all of the

1 other Class Members

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

- 4 A. Not provided with all off duty meal periods;
- 5 B. Not authorized and permitted to take all rest break periods;
- 6 C. Not paid one hour's pay for each workday in which Defendants failed to
7 authorize and permit them to take one or more timely rest periods;
- 8 D. Not paid one hour's pay for each workday in which Defendants failed to
9 provide them with one or more timely meal periods;
- 10 E. Not paid all wages earned, including, but not limited to, minimum, regular,
11 overtime, and doubletime wages for work performed while clocked out;
- 12 F. Not indemnified for all necessary business expenditures incurred during
13 the discharge of their duties;
- 14 G. Not provided with accurate and complete wage statements; and
- 15 H. Not timely paid all earned and unpaid wages at the time their employment
16 ended.

17 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

26 33. Section 2 of the Wage Order defines "hours worked" as "the time during which an
27 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."

28 34. Section 3 of the Wage Order states:



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

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

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

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

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

24 36. Labor Code section 510 states:

25 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
26 in one workday and any work in excess of 40 hours in any one workweek and the
27 first eight hours worked on the seventh day of work in any one workweek shall be
28 compensated at the rate of no less than one and one-half times the regular rate of
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.



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

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

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

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

11 41. At all relevant times during the applicable limitations period, Defendants failed to
12 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
13 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
14 doubletime hours, respectively, that they worked at the correct rates of pay.

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

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

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

26 **B. UNLAWFUL WAGE DEDUCTIONS**

27 45. Under Labor Code § 221, "It shall be unlawful for any employer to collect or
28 receive from an employee any part of wages theretofore paid by said employer to said employee."



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 Defendants deducted wages from the wages earned by Kurkhill and all of the other Class
2 Members in violation of Labor Code § 221.

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

7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PROVIDE MEAL PERIODS**
9 **Lab. Code §§ 226.7 and 512**

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

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

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

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

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

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

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

27 An employer shall not employ an employee for a work period of
28 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.

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

Meal Periods:

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

52. 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



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

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

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

54. As discussed above, Defendants intentionally failed to provide Plaintiff and the Class Members with all required, timely, 30-minute duty free meal periods in accordance with the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

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

56. 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.

57. 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.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

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

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

59. 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



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

of California Labor Code §§ 226.7 and 1198, and the Wage Order.

60. 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.

61. 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.

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 and Health, the employer shall pay the employee one
2 additional hour of pay at the employee's regular rate of
3 compensation for each work day that the meal or rest
period is not provided.

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

7 64. As discussed above, at all relevant times, Defendants intentionally failed to
8 authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from
9 any work duties in accordance with the Wage Order. Furthermore, Defendants failed to pay
10 premium wages to Plaintiff and the Class Members for days on which they failed to authorize and
11 permit Plaintiff and the other Class Members to take timely rest periods.

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

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

23 67. Defendants failed to provide Plaintiff with all required rest breaks in accordance
24 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at 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 Class Members with all rest breaks required by
27 California law.

28 68. Defendants failed to pay Plaintiff the additional wages required by California



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
2 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
3 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
4 Class Members with additional wages for all rest breaks not provided to them as required by
5 California Labor Code § 226.7.

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

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

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO INDEMNIFY**

14 **Lab. Code § 2802**

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

16 71. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

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

24 75. As described above, the Defendants required Kurkhill and all of the other Class
25 Members to incur certain business expenses in the course of performing their duties. However,
26 the Defendants did not provide these items and did not reimburse Kurkhill and the other Class
27 members for these items.

28 76. Plaintiff is informed and believes and thereon alleges that, at all relevant times,



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
2 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
3 during the course of performing their duties.

4 77. By reason of the above, Plaintiff and the Class Members are entitled to
5 reimbursement for all necessary expenditures and losses and interest due and owing to within four
6 years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to
7 California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the members of the
8 Class seek reasonable attorney's fees pursuant to Labor Code § 2802(c).

9 **FIFTH CAUSE OF ACTION**

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

11 **Lab. Code § 226**

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

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

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

17 A. Gross wages earned;

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

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

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

25 E. Net wages earned;

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

27 G. The name of the employee and his or her social security number, except
28 that by January 1, 2008, only the last four digits of his or her social security number or an



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 employee identification number other than a social security number may be shown on the itemized
2 statement;

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

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

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

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

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

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

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

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

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

25 82. As alleged herein, at all relevant times during the applicable limitations period,
26 Defendants violated California Labor Code section 226 because they did not properly and
27 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
28 the corresponding number of hours worked at each rate by the employee and other requirements



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 of California Labor Code section 226. Defendants failed to state in the wage statements they
2 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
3 including, but not limited to, regular and overtime wages for work they performed off-the-clock.

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

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

18 85. Pursuant to California Labor Code § 226(e), Plaintiff and the class are entitled to
19 recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period
20 in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each
21 violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate
22 penalty of four thousand dollars (\$4,000) per class member, and are also entitled to an award of
23 costs and reasonable attorneys' fees.

24
25 ///

26
27 ///

28



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

15 90. Defendants failed to pay Plaintiff and all of the other Class Members whose
16 employment ended all of the earned but unpaid wages described above by the conclusion of their
17 employment with Defendants, including minimum wages, regular wages, overtime wages,
18 doubletime wages, unprovided meal period premium wages, unprovided rest break premium
19 wages, and other compensation.

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

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

28 93. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
2 penalties for each Class Member.

3 **SEVENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

25 99. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
26 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
27 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

28 ///



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab Code §§2698, *et seq.*)

(By Plaintiff and the Aggrieved Employees against all Defendants)

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

101. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning November 20, 2023 and ending on the date that final judgment is entered in this action.

102. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

103. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

104. Labor Code section 1174, which also pertains to recordkeeping, states:
Every person employing labor in this state shall



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

...

(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.

105. 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).

106. 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.



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

(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.

107. 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.

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

109. 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.

110. 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.

111. 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).



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 B. For violations of California Labor Code § 226(a), twenty-five dollars (\$25)
2 for each aggrieved employee per pay period for violation of paragraphs (1) to (7), inclusive, or
3 paragraph (9) of subdivision (a) of Section 226 if the employee could promptly and easily
4 determine from the wage statement alone the accurate information specified by subdivision (a) of
5 Section 226. If the alleged violation is a violation of paragraph (8) of subdivision (a) of Section
6 226, the civil penalty applicable under this part for the violation is twenty-five dollars (\$25) for
7 each aggrieved employee per pay period if the employee would not be confused or misled about
8 the correct identity of their employer or, if their employer is a farm labor contractor, the legal
9 entity that secured the services of that employer (penalty amounts established by California Labor
10 Code § § 2699(f)(2)).

11 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
12 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
13 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
14 established by California Labor Code § 558).

15 D. For violations of California Labor Code § 1197, one hundred dollars
16 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
17 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
18 (regardless of whether the initial violations were intentionally committed) (penalty amounts
19 established by California Labor Code § 1197.1).

20 E. For violations of California Labor Code § 1174, \$500 for Each Aggrieved
21 employee for each violation of Labor Code section 1174 (penalties set by Labor Code
22 section 1174.5).

23 F. For violations of California Labor Code § 221, one hundred dollars
24 (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred
25 dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation
26 (penalty amounts established by California Labor Code § 225.5).

27 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
28 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period.



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1 The civil penalty is two hundred dollars (\$200) for each aggrieved employee per pay period if
2 either of the following are met: (i) Within the five years preceding the alleged violation, the
3 agency or any court issued a finding or determination to the employer that its policy or practice
4 giving rise to the violation was unlawful or (ii) The court determines that the employer's conduct
5 giving rise to the violation was malicious, fraudulent, or oppressive (penalty amounts established
6 by California Labor Code § 2699(f)(2)).

7 112. Plaintiff has complied with the procedures for bringing suit specified in California
8 Labor Code § 2699.3. By a letter dated November 20, 2024, Plaintiff filed a written notice online
9 with the Labor and Workforce Development Agency ("LWDA") and gave written notice by
10 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
11 have been violated, including the facts and theories to support the alleged violations. A true and
12 correct copy of the notice to the LWDA is attached as **Exhibit A**. Plaintiff accompanied her
13 LWDA notice with a fee in the amount of \$75.00 each. The LWDA has failed to take action in
14 response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipate that the
15 LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate
16 these allegations.

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

20 **V. PRAYER FOR RELIEF**

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

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

25 B. An order that Plaintiff be appointed class representative;

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

27 D. Unpaid wages, including minimum, regular, overtime, double-time,
28 missed meal period premium, and missed rest period premium wages;



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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.

VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: January 29, 2025

By: 

DAVID G. SPIVAK
CAROLINE TAHMASSIAN,
Attorneys for Plaintiff(s), REBECCA
KURKHILL, and all others similarly
situated



SPIVAK LAW
EMPLOYEE RIGHTS

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

Office:
1875 Century Park East
7th Fl
Los Angeles, CA 90067

EXHIBIT A



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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

Mail
Office
Tel
Fax
Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

November 20, 2024

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

Re: Rebecca Kurkhill / Kendo

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Rebecca Kurkhill (hereafter “Kurkhill” or “Complainant”) provides notice that Kendo Holdings Inc., and related entities (collectively “the Kendo Employers” or “the Employers”) violated her rights and those of all other individuals the Kendo Employers have employed or otherwise contracted with in California as hourly, non-exempt, including salespersons and keyholders, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and other Labor Code statutes and related employee protections. On behalf of herself and all other Aggrieved Employees, Kurkhill hereby provides this notice to the Labor & Workforce Development Agency and the Kendo Employers and their agents and representatives.

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

///

Statement of Facts

On approximately March 24, 2023, the Kendo Employers began to employ Kurkhill in Los Angeles in the position of salesperson and keyholder. The Kendo Employers continuously employed her in that capacity until on or about July 15, 2024 when her employment ended.

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

The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Kendo Employers required Kurkhill and the other Aggrieved Employees to work off-the-clock and without pay. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods.

The Kendo Employers failed to compensate Kurkhill 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 Kendo Employers required Kurkhill and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked overtime hours.

The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Kendo Employers required Kurkhill and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked doubletime hours.

At all relevant times, the Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees with all timely, 30-minute, off-duty meal periods. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods. The Kendo Employers also failed to pay premium wages for days on which they failed to provide Kurkhill and all of the other Aggrieved Employees with meal periods as required by law. The Kendo Employers instructed their managers to edit Kurkhill and the other Aggrieved Employees' time records to create the appearance of timely meal periods. Kurkhill's manager, Veronica Magana, often edited Kurkhill's time records to create the appearance of timely meal periods. For example, on July 4, 2024, due to her workload, Kurkhill was not able to take a full 30-minute meal period. Veronica Magana was aware of this fact. However, instead of paying Kurkhill premium wages for that day, she edited Kurkhill's time records to show that she took a meal period of exactly 30 minutes.

At all relevant times, the Kendo Employers failed to authorize and permit Kurkhill and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Kendo Employers never authorized, scheduled, or permitted Kurkhill and all of the other Aggrieved Employees to take any rest breaks. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through rest breaks. The Kendo Employers also failed to pay premium wages for days on which they failed to authorize and permit Kurkhill and all of the other Aggrieved Employees to take rest breaks as required by law.

The Kendo Employers unlawfully deducted wages belonging to Kurkhill and all of the other Aggrieved Employees. The Kendo Employers deducted hours that Kurkhill and the other Aggrieved Employees spent in on-duty meal periods.

At all relevant times, the Kendo Employers failed to issue to Kurkhill 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 Kendo Employers knowingly and intentionally failed to state on the wage statements they issued to Kurkhill 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 related compensation.

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

At all relevant times, the Kendo Employers required Kurkhill and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Kendo Employers required Kurkhill and all of the other Aggrieved Employees to supply mobile phone to perform their job duties, including receiving and responding to communications from management and work scheduling. The Kendo Employers also required Kurkhill and all of the other Aggrieved Employees to pay for their own parking and did not provide them with transportation to the worksite. The Kendo Employers did not provide these items and did not reimburse Kurkhill and the other Aggrieved Employees for these items, nor did the Kendo Employers reimburse Kurkhill and the other Aggrieved Employees for mobile phone service bills.

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

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

- (a) The Kendo Employers failed to pay Kurkhill 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 Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Kendo Employers failed to authorize and permit Kurkhill and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees at one hour's pay for each day in which the Kendo

Employers failed to provide them with one or more meal periods as required by law;

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

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

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage

Order, § 2(H). At all relevant times during the applicable limitations period, the Kendo Employers, Kurkhill, and all of the Aggrieved Employees were covered by the Wage Order because the Kendo Employers operated, and Kurkhill, and all of the Aggrieved Employees worked for, one or more establishments operated as lip stick and other related products sales businesses. Accordingly, Kurkhill and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

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

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

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

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

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

The Kendo Employers required Kurkhill and the other Aggrieved Employees to work off-the-clock and without pay. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods.

The Kendo Employers required Kurkhill and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked overtime hours.

The Kendo Employers required Kurkhill and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked doubletime hours.

At all relevant times during the applicable limitations period, the Kendo Employers failed to compensate Kurkhill 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, Kurkhill now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

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

sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

In addition, Labor Code section 226.7 states:

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

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

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

At all relevant times, the Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees with all timely meal periods. The Kendo Employers denied Kurkhill and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods. Furthermore, the Kendo Employers failed to pay premium wages for days on which they failed to provide Kurkhill and all of the other Aggrieved Employees with timely meal periods. Accordingly, Kurkhill now seeks civil penalties for these Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

Section 2(G) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

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

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

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

As discussed above, the Kendo Employers failed to authorize and permit Kurkhill 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 Kendo Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through rest breaks. Moreover, the Kendo Employers failed to pay Kurkhill and all of the other Aggrieved Employees premium wages on workdays the Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Kurkhill now seeks civil penalties for these Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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 Kendo Employers deducted wages from the wages earned by Kurkhill and all of the other Aggrieved Employees in violation of Labor Code § 221. Accordingly, Kurkhill seeks civil penalties on behalf of herself 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 and Complete 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, complete, 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 Kendo 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 Kendo Employers failed to state in the wage statements they issued to Kurkhill 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 Kendo Employers knowingly and intentionally failed to state on the wage statements they issued to Kurkhill and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum, regular, overtime and doubletime wages, and all premium wages earned for missed meal and rest breaks, and related compensation. Accordingly, Kurkhill seeks civil penalties for the Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during

which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

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

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

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

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

The Kendo Employers failed to pay Kurkhill 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 Kurkhill, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. By failing to pay Kurkhill and all of the other Aggrieved Employees as set forth above at the end of employment, the Kendo Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Kurkhill seeks civil penalties from the Kendo 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 Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

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

Additionally, the Wage Order states,

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

...

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

Wage Order, §§ 9(A) and (B).

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

At all relevant times, the Kendo Employers required Kurkhill and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Kendo Employers required Kurkhill and all of the other Aggrieved Employees to supply mobile phone to perform their job duties, including receiving and responding to communications from management and work scheduling. The Kendo Employers also required Kurkhill and all of the other Aggrieved Employees to pay for their own parking and did not provide them with transportation to the worksite. The Kendo Employers did not provide these items and did not reimburse Kurkhill and the other Aggrieved Employees for these items, nor did the Kendo Employers reimburse Kurkhill and the other Aggrieved Employees for mobile phone service bills. Accordingly, Kurkhill seeks civil penalties for these Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows:

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

///

///

Failure to 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 Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including, and related compensation. As a result, the Kendo Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Kurkhill and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Kurkhill seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

LWDA / The Kendo Employers

Re: Rebecca Kurkhill

November 20, 2024

Page 21 of 21

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

Conclusion

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

Sincerely,



David Glenn Spivak, Esq.

Caroline Tahmassian, Esq.

david@spivaklaw.com

caroline@spivaklaw.com

cc: Ms. Rebecca Kurkhill

Kendo Holdings Inc.

c/o Michael DiChiara, Esq.

333 Bloomfield Ave., Ste 305-4

Caldwell, NJ 07006-5166

Michael.dichiara.ext@lvmh.com

EXHIBIT 5



Sample size calculator

What margin of error can you accept?

15 %

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?

95 %

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?

200

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?

50 %

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 **36**

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	6.95%	0.00%	0.00%	Your sample size would need to be	27	36	55

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

© 2004 by [Raosoft, Inc.](#). Please download and reuse this web page!
[Questions? Please let us know.](#)

Print

Done

EXHIBIT 6

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

Case title:	Rebecca Kurkhill v. Kendo Holdings Inc.
Case no.:	24STCV32366
Court:	Los Angeles
Judge:	The Honorable Laura A. Seigle, Dept. 17
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Sunday, December 6, 2020
Lab.Code § 203 (waiting time penalties) period begins:	Monday, December 6, 2021
Lab.Code § 2699 (civil penalties) period begins:	Tuesday, November 21, 2023
Lab.Code § 226 (pay stub penalties) period begins:	Wednesday, December 6, 2023
LWDA Notice:	Wednesday, November 20, 2024
Lawsuit:	Friday, December 6, 2024
Sample begin:	Thursday, December 24, 2020
Sample end:	Saturday, June 21, 2025
Sample calendar days:	1,640
Mediation:	Friday, September 5, 2025
Anticipated Settlement Period end date:	Saturday, January 3, 2026
Settlement Period to Sample Period:	113.05%

Classes / Groups sizes

UCL Class Members:	200
UCL Workweeks:	10,124
UCL Wage Statements:	5,062
UCL Workdays:	38,975
UCL Calendar days:	1,734
UCL Months:	2330.03

Waiting Time Penalties Class Members:	128
---------------------------------------	-----

PAGA Aggrieved Employees:	109
PAGA Wage Statements:	2,311

Wage Statement Class Members:	
Wage Statement Class Wage Statements:	2,264

Averages

Average Hourly Rate:	\$	26.31
Average Overtime Rate:	\$	39.47
Average Doubletime Rate:	\$	52.62
Average Work Hours Per Day:		7.13
Average Work Hours Per Week:		29.85
Average Workdays Per Week:		4.19
Workdays to Calendar Days (%):		59.86%
Paycycle:	biweekly (26 paychecks/year)	
Paychecks Per Year:		26

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

Case title:	Rebecca Kurkhill v. Kendo Holdings Inc.
Case no.:	24STCV32366
Court:	Los Angeles
Judge:	The Honorable Laura A. Seigle, Dept. 17
Page subject:	Unpaid wages (work during off-the-clock meal periods)
Authority:	Lab.Code §§ 1194, 1194.2, and 1198

Average Hourly Rate:	\$	26.31
Unpaid hours per work day:		0.50
Workdays:		38,975
Actionable workdays:		50.00%
Interest:		10%
Unpaid Wages:	\$	281,993.87
Liquidated Damages:	\$	281,993.87

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

Case title:	Rebecca Kurkhill v. Kendo Holdings Inc.
Case no.:	24STCV32366
Court:	Los Angeles
Judge:	The Honorable Laura A. Seigle, Dept. 17
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198
Average Hourly Rate:	\$ 26.31
Actionable workdays:	38,975
Violation rate (%)	50.00%
Meal Period Premium Wages:	\$ 512,716.13

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

Case title:	Rebecca Kurkhill v. Kendo Holdings Inc.
Case no.:	24STCV32366
Court:	Los Angeles
Judge:	The Honorable Laura A. Seigle, Dept. 17
Page subject:	Unprovided Rest Periods
Authority:	Lab.Code §§ 226.7 and 1198
Average Hourly Rate:	\$ 26.31
Actionable workdays:	38,975
>>Percentage qualifying for rest periods:	97.49%
Violation rate (%)	100.00%
Rest Period Premium Wages:	\$ 1,025,432.25

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

Case title:	Rebecca Kurkhill v. Kendo Holdings Inc.
Case no.:	24STCV32366
Court:	Los Angeles
Judge:	The Honorable Laura A. Seigle, Dept. 17
Page subject:	Unreimbursed Expenses
Authority:	Lab.Code § 2802

Cellphone

Actionable Workweeks:		10,124.00
Average Cellphone Bill per Workweek:	\$	30.00
Percentage Attributable to Work:		30%
Interest Rate:		10%
Unreimbursed Cellphone Costs:	\$	100,227.60

Parking

Actionable Workweeks:		10,124.00
Average Parking Cost per Workweek:	\$	30.00
Interest Rate:		10%
Unreimbursed Parking Costs:	\$	334,092.00

Unreimbursed Expenses:	\$	434,319.60
-------------------------------	-----------	-------------------

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

Case title:	Rebecca Kurkhill v. Kendo Holdings Inc.
Case no.:	24STCV32366
Court:	Los Angeles
Judge:	The Honorable Laura A. Seigle, Dept. 17
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226
Wage Statement Class Members:	109
Wage Statement Class Wage Statements:	2,264
Initial Penalty:	\$ 50.00
Subsequent Penalty:	\$ 100.00
Statutory Wage Statement Penalties:	\$ 220,950.00

Confidential Settlement Communication

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

Case title:	Rebecca Kurkhill v. Kendo Holdings Inc.
Case no.:	24STCV32366
Court:	Los Angeles
Judge:	The Honorable Laura A. Seigle, Dept. 17
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		128
Days waiting:		30
Average Hourly Rate:	\$	26.31
Average Overtime Rate:	\$	39.47
Average Doubletime Rate:	\$	52.62
Average Work Hours Per Day:		7.13
Regular Hours Per Day:		7.13
Overtime Hours Per Day:		-
Doubletime Hours Per Day:		-
Waiting Time Penalties:	\$	720,346.75

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

Case title: Rebecca Kurkhill v. Kendo Holdings Inc.
Case no.: 24STCV32366
Court: Los Angeles
Judge: The Honorable Laura A. Seigle, Dept. 17
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Subsequent penalty	Pay periods	Total
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00	1,156 \$	115,550.00
Overtime wages/M meal Periods (Lab.Code §§ 510/512):	Lab.Code § 558	\$ 50.00	\$ 100.00	1,156 \$	57,775.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	2,311 \$	231,100.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00	2,311 \$	231,100.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 100.00	\$ 200.00	2,311 \$	231,100.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	2,311 \$	231,100.00
Total:				\$	1,097,725.00

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

Case title: Rebecca Kurkhill v. Kendo Holdings Inc.
Case no.: 24STCV32366
Court: Los Angeles
Judge: The Honorable Laura A. Seigle, Dept. 17
Page subject: **Totals**
Authority: Various

		Risk		
Restitution		Reduction		Demand
Unpaid Wages:	\$ 281,993.87	70%	\$	84,598.16
Liquidated Damages:	\$ 281,993.87	70%	\$	84,598.16
Meal Period Premium Wages:	\$ 512,716.13	70%	\$	153,814.84
Rest Period Premium Wages:	\$ 1,025,432.25	70%	\$	307,629.68
Unreimbursed Expenses:	\$ 434,319.60	70%	\$	130,295.88
Restitution subtotal:	\$ 2,536,455.71	70%	\$	760,936.71
Penalties		70%		
Statutory Wage Statement Penalties:	\$ 220,950.00	70%	\$	66,285.00
Waiting Time Penalties:	\$ 720,346.75	70%	\$	216,104.03
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 115,550.00	70%	\$	34,665.00
Overtime wages/M meal Periods (Lab.Code §§ 510/512):civil penalties:	\$ 57,775.00	70%	\$	17,332.50
Rest periods (Lab.Code § 1198):civil penalties:	\$ 231,100.00	70%	\$	69,330.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 231,100.00	70%	\$	69,330.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 231,100.00	70%	\$	69,330.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 231,100.00	70%	\$	69,330.00
Penalties subtotal:	\$ 2,039,021.75		\$	611,706.53
Grand total:	\$ 4,575,477.46		\$	1,372,643.24

EXHIBIT 7

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
3 9454 Wilshire Blvd.
4 Suite 303
5 Beverly Hills, CA 90212
6 Telephone (310) 499-4730
7 Facsimile (310) 499-4739
8 Email david@spivaklaw.com

CONFIRMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

John A. Clark, Executive Officer/Clerk
BY MARY GARCIA, Deputy

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
10 (UNLIMITED JURISDICTION)

11 ALINA GHRDILYAN; EVGENIA
12 SULTANIAN; and all others similarly situated,

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

16 RJ FINANCIAL, INC., a California
17 corporation; RAMIL ABALKHAD, an
18 individual; and DOES 1 through 50, inclusive,

19 *Defendants.*

Action filed: 01/28/2010
CMC: 05/10/2010, 8:30 a.m.
FSC: Not set
Trial: Not set
Dept: 36, Hon. Gregory Alarcon

26 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
27 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

THE
SPIVAK
LAW FIRM

1 “Defendants”) for violations of the California Labor Code, the applicable Industrial Welfare
2 Commission Order(s) (“Wage Order(s)”), and the California Business and Professions Code,
3 and as grounds therefore alleges:

4 **INTRODUCTION**

5 1. This action arises out of the allegedly unlawful labor practices of Defendants in
6 California. Through this class and collective action, Plaintiffs seek to represent the below-
7 defined classes and subclasses of persons who Defendants have allegedly committed labor law
8 violations against including, but not limited to, wage underpayments. As a result of the
9 allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and
10 injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and
11 other similarly situated persons.

12 **PARTIES AND CONDUCT**

13 **A. Plaintiffs and Class Members**

14 2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an
15 individual, was employed in a position that she alleges Defendants have classified as non-
16 exempt from the overtime requirements of the California Labor Code and the applicable wage
17 order(s).

18 3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an
19 individual, was employed in a position that she alleges Defendants have classified as non-
20 exempt from the overtime requirements of the California Labor Code and the applicable wage
21 order(s).

22 4. At relevant times during the applicable limitations periods, Plaintiffs allege that
23 Defendants have failed to compensate them and Defendants’ other California employees for all
24 of the hours that they have worked, failed to compensate them for all of the overtime hours that
25 they have worked at overtime rates, failed to provide them with all required rest and meal
26 periods, failed to pay them additional required wages for rest and meal periods, improperly
27 denied earned wages that Defendants without authorization deducted from paychecks or
required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

1 all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to
2 provide them with accurate written wage statements.

3 **B. Defendants**

4 5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of
5 California. It was at all relevant times a "person" under Labor Code § 18.

6 6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an
7 individual residing in the County of Los Angeles, State of California, was at all relevant times
8 the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times,
9 ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.'s
10 accounting and bookkeeping and all administrative functions, including payroll. The company
11 maintained books and records by staff members under his direction. At all relevant times,
12 ABALKHAD was a "person acting on behalf of an employer" (RJ FINANCIAL, INC. and the
13 Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours
14 and days of work in orders of the Industrial Welfare Commission as described below under
15 Labor Code § 558. Also, he was at all relevant times a "person" under Labor Code § 18.

16 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
18 are informed and believe and thereon allege that said defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
20 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE
21 defendants when ascertained.

22 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all defendants were the agents, employees and/or servants, masters or employers of the
24 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other defendants.

27 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

1 not paying Plaintiffs and other members of the below-described classes in accordance with
2 applicable California labor laws as alleged herein.

3 10. Plaintiffs are informed and believe and thereon allege that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 CLASS ACTION ALLEGATIONS

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully
10 alleged herein.

11 12. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to
13 represent the following classes and subclasses of current, future, and/or former employees of
14 Defendants defined below:

15 **Wages Class:** All persons employed by Defendants in California who
16 have not been paid for all hours worked during the period beginning four
17 (4) years prior to the filing of this action and ending on the date that final
18 judgment is entered in this action.

19 **Overtime Class:** All persons employed by Defendants in California who
20 have not been paid at the legally required overtime rates for all hours
21 worked in excess of eight (8) hours in one (1) day and/or forty (40) hours
22 in one (1) week during the period beginning four (4) years prior to the
23 filing of this action and ending on the date that final judgment is entered in
24 this action.

25 **Rest Periods Class:** All persons employed by Defendants in California
26 who were not provided with a net rest period of at least ten (10) minutes
27 per each four (4) hour work period, or major portion thereof, during the
28 period beginning four (4) years prior to the filing of this action and ending
29 on the date that final judgment is entered in this action.

30 **Meal Periods Class:** All persons employed by Defendants in California
31 who were not provided with uninterrupted thirty (30) minute meal periods
32 during each work period of five (5) or more hours during the period
33 beginning four (4) years prior to the filing of this action and ending on the

1 date that final judgment is entered in this action.

2 **Vacation Pay Class:** All persons employed by Defendants in California
3 who earned vested paid vacation days without receiving
4 compensation for each vested paid vacation day during the
5 period beginning four (4) years prior to the filing of this action
6 and ending on the date that final judgment is entered in this
7 action.

8 **Unauthorized Deduction Class:** All persons employed by Defendants in
9 California whose wages were deducted by Defendants without statutory
10 authority or written consent during the period beginning four (4) years
11 prior to the filing of this action and ending on the date that final judgment
12 is entered in this action.

13 **Inaccurate Wage Statement Class:** All persons employed by Defendants
14 in California, including but not limited to members of the **Wages Class,**
15 **Overtime Class, Rest Period Class, Meal Period Class, and/or**
16 **Unauthorized Deduction Class** during the period beginning four (4)
17 years prior to the filing of this action and ending on the date that judgment
18 is entered in this action.

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

1 Class, and/or **Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class:** All members of the **Wages Class**, **Overtime Class**,
6 **Rest Periods Class**, **Meal Periods Class**, **Inaccurate Wage Statement**
7 **Class**, **Unauthorized Deduction Class**, **Former Employee Class**, and/or
8 **Indemnification Class**.

9 13. This action has been brought and may be maintained as a class action pursuant to
10 California Code of Civil Procedure § 382 because there is a well-defined community of interest
11 among the persons who comprise readily ascertainable class.

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

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;

24
25 ///

26
27 ///

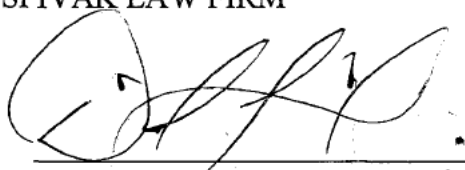
1 M. Reasonable attorney's fees; and

2 N. Such other relief as the Court deems just and proper.

3
4 Respectfully submitted,

5 THE SPIVAK LAW FIRM

6
7
8 Date: February 23, 2010

By: 

DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 8

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

4 OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
5 ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
6 ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDING 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.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1

2

3

3

4

)

$$\left\{ \right.$$
$$\{$$

5

)

6

)

7

)

8

9

)

10

)

$$\left\{ \right.$$

SS

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 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 “**p ailing** party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the **p ailing** 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 **p ailing** 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 **p ailing** 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 **p ailing** 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 **p ailing** 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 **p ail** 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 **p ailing** 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 **e ployers**, whichever is the **p ailing** 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 **p ailing** 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 **p ailing** 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 **p ailing** 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 “**p ailing** 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 2 8.5 is a reciprocal attorney fees statute that requires an award of fees to the “p ailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 2 8.5 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 p ail 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 pr ailing party under § 2 8.5. 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, § 2 8.5 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 p ail on their minimum wage or overtime compensation claims.

Section 2 8.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the e ployer to become the p ailing party in the litigation. Defendants are the p ailing party under § 2 8.5 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 p ailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 2 8.5 will be referred to in this opinion as § 2 8.5

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 2 8.5](#) 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](#).

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

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 2 8.5](#). 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 2 8.5](#)". 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 **p ailing** 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 **p ailing** 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 **p ailing** party and entitled to recover its fees and costs under Labor Code section 2 8.5. 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 2 8.5 which authorizes recovery by the **p ailing** 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 2 8.5 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 2 8.5

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to Labor Code section 2 8.5³ Section 2 8.5 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 **p ailing** 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 2 8.5 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 **p ailing** 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 2 8.5 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 **p ailing** 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 **p ailing** 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.

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 12

2009 WL 4718721

Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S-07-2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

[Adam Wang](#), Law Office of Adam Wang, San Jose, CA, for Plaintiffs.

Kimberley Ann Worley, [Stephen R. Holden](#), Holden Law Group, Auburn, CA, for Defendant.

Opinion

ORDER

[LAWRENCE K. KARLTON](#), Senior District Judge.

***1** On August 19, 2009, the court granted defendants' motion for judgment on the pleadings, dismissing four of plaintiffs' causes of action for failure to state a claim, and dismissing the fifth and sole remaining cause of action for lack of subject matter jurisdictions. Defendants have submitted a bill of costs and separately moved for attorneys' fees, both of which have been opposed by plaintiffs. The court resolves the matter on the papers and after oral argument. For the reasons stated below, defendants' motion for fees and costs is granted in part.

I. BACKGROUND

Defendants Heidi and James Guertin allegedly operate a business under the name Norcal Plastering. Plaintiffs, four individuals formerly employed by Norcal, filed suit purporting to represent themselves and others similarly situated. The complaint stated five causes of action, for violations of (1) [California Labor Code section 1194](#), (2) the Fair Labor Standards Act, (3) [California Labor Code section 226.7](#), (4) [California Labor Code section 203](#), and (5) [California Business and Professions Code section 17203](#).

On August 19, 2009, the court held that plaintiffs' allegations were insufficient to support the second through fifth claims. The Fair Labor Standards Act claim failed because plaintiffs had not alleged facts sufficient to support the inference that Norcal Plastering or plaintiffs themselves engaged in interstate commerce, a predicate for liability under the act. Order at 8–11. The Third, Fourth, and Fifth claims failed because the allegations therein pertained to entities not party to this suit. *Id.* at 11–12. The court denied plaintiff's request for leave to amend to correct these deficiencies, explaining that plaintiffs had notice of these deficiencies before the scheduling order was entered, but that plaintiffs had taken no action to correct them until discovery in the case had closed. The court dismissed these claims, and declined to retain supplemental jurisdiction over plaintiffs' sole remaining claim. Judgment on the pleadings under [Fed.R.Civ.P. 12\(c\)](#) was entered for defendants on August 19, 2009.

Defendants filed a bill of costs and motion for attorneys fees. Plaintiffs oppose both, arguing that defendants were not

“prevailing parties” because, as plaintiffs understood this court’s August 19, 2009 order, the state law claims had been dismissed without prejudice, and plaintiffs were free to refile the federal claim in federal court. Plaintiffs alternatively argue that even if defendants prevailed, they are not entitled to a fee award under the court’s inherent power or under any statute.

II. DISCUSSION

A. Defendants Are A Prevailing Party

Under all of the fee shifting authorizations at issue in this case, fees and costs are only available to prevailing parties. Under California law, “a defendant in whose favor a dismissal is entered” is a prevailing party. [Cal.Code Civ. P. § 1032\(a\)\(4\)](#). Under federal law, a party has not prevailed unless it “experienced an alteration in the legal relationship” with the other parties. [Avery v. First Resolution Management Corp.](#), 568 F.3d 1018, 1024 (9th Cir.2009). Plaintiffs argue that the court’s order permits plaintiffs to refile each of their claims, and that as a result, no such change has occurred. *Id.*, [Oscar v. Alaska Dep’t of Educ. & Early Dev.](#), 541 F.3d 978, 982 (9th Cir.2008).

*2 Plaintiffs misunderstand the nature of the prior order and its effect under California and federal law. [Fed.R.Civ.P. 41\(b\)](#) provides that “[u]nless the dismissal order states otherwise ... any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” Thus, although the dismissal order did not specifically state that it was “on the merits” or “with prejudice,” dismissal of the second through fifth claims was precisely such an adjudication. [Stewart v. United States Bancorp](#), 297 F.3d 953, 956 (9th Cir.2002). Plaintiffs’ contention that a dismissal for failure to allege the elements of a cause of action is not a substantive dismissal is without merit. *Id.*

Plaintiffs’ first claim, which was dismissed for lack of subject matter jurisdiction, was not adjudicated on the merits. [Avery](#), 568 F.3d at 1024. The fact that plaintiff may refile this one claim does not defeat defendants’ claim to prevailing party status as to the others.

B. Particular Fee Shifting Provisions

Defendants argue that they are entitled to fees under [28 U.S.C. section 1927](#), under [Cal. Lab.Code section 218.5](#), and under the court’s inherent authority. The court discusses each in turn.

1. [28 U.S.C. § 1927](#)

“Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” [28 U.S.C. § 1927](#). Here, defendants have not identified any act by which plaintiffs multiplied the proceedings. Filing of the initial complaint cannot itself violate this section. “Because the section authorizes sanctions only for the ‘multipli[cation of] proceedings,’ it applies only to unnecessary filings and tactics once a lawsuit has begun.” [Moore v. Keegan Mgmt. Co. \(In re Keegan Mgmt. Co., Sec. Litig.\)](#), 78 F.3d 431, 435 (9th Cir.1996). Nor did plaintiffs’ counsel’s response to depositions noticed by defendants “multipl[y] the proceedings.”

Rather than identify affirmative acts, defendants argue that plaintiffs’ counsel multiplied proceedings by failing to withdraw and dismiss the case after the close of discovery. The only authority provided for this interpretation of [section 1927](#) is a case from the Southern District of Florida. See [Murray v. Playmaker Servs., LLC](#), 548 F.Supp.2d 1378, 1383 (S.D.Fla.2008). The court respectfully disagrees, and thereby declines to conclude that an attorney multiplies proceedings simply by failing to voluntarily dismiss an existing lawsuit.

2. The Court's Inherent Powers

The court has an inherent authority to order payment of fees as a sanction “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for an improper purpose.” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir.2001) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 and n. 10, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); see also *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In this case, defendants argue that plaintiffs have done a poor job of litigating this case, and that this demonstrates that they filed their a purported class action for the allegedly improper purpose of pressuring defendants to settle, rather than for any belief as to the action's merits. This argument is unsupported. Although, as noted in the order granting defendants' motion for judgment on the pleadings, plaintiffs did little in the litigation of this case, this does not demonstrate bad faith or other grounds for sanction under the court's inherent authority.

*3 Defendants also argue that plaintiffs have demonstrated bad faith by filing a complaint in state court that re-alleges the four the state-law claims previously filed in this court. Whether that filing is in bad faith is an issue for the state court.

3. Cal. Lab.Code § 218.5

Lastly, defendants argue that the court should award fees under [California Labor Code section 218.5](#). This statute provides that “in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party.” [Cal. Lab.Code § 218.5](#). The Ninth Circuit has held that this provision may be applied in suits filed in federal court. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815 (9th Cir.2009) (affirming award of fees to a prevailing plaintiff); see also *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir.1985) (“federal courts in diversity actions apply state law with regard to the allowance (or disallowance) of attorneys' fees.”). The court concludes that this section applies to one of plaintiffs' claims, that an award of fees is mandatory and not limited to cases in which plaintiffs acted wrongfully, and that defendants prevailed for purposes of this statute.

First, [section 218.5](#) does not apply to all wage claims. The statute contains an exemption, specifying that “[t]his section does not apply to any action for which attorney's fees are recoverable under [\[California Labor Code\] Section 1194](#).”¹ [Section 1194](#) governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim “for nonpayment of wages” under [section 218.5](#).² See *Murphy v. Kenneth Cole Production, Inc.*, 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within [section 218.5](#), and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg*'s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg*, 434 U.S. at 416; see also 42 U.S.C. § 2000e–5(k) (“the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.”).³ The Court's holding directed the lower courts in their exercise of this discretion. [Section 218.5](#), in contrast, provides that the court “shall” award fees. “As used in the Labor Code, ‘shall’ is mandatory.” *Smith v. Rae–Venter Law Group*, 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in* *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. [Cal.Code. Civ. P. § 1032\(a\)\(4\)](#), *On–Line Power, Inc. v. Mazur*, 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by [section 218.5](#), a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.⁴

*4 Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond*, 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request \$29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at \$315 per hour.⁵ The court has previously held that \$300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond*, 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. See Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

*5 Thus, defendants are entitled to a fees for 70.6 hours of work at \$300 per hour, or \$21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of \$1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT 13

05-30-2013 | 05:13 PM | Author: [Robin Shea](#)

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)



Earlier, I busted on "my own side" by giving [four reasons why employers shouldn't be so quick to fire their employees](#). To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid *legal* claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

***Most people consider a lawsuit an "act of war."** They probably were on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to sue! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. **AWKWARD!** No wonder they've turned on you.

***Some employees really, sincerely do believe the company was in the right.** Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really were very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

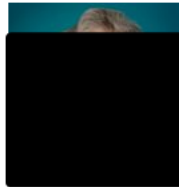
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably *don't* have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents employees in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the [Employment and Labor Law Insider](#) for additional insights from [Robin Shea](#), a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

For more information about LexisNexis products and solutions connect with us through our [corporate site](#).



Tags: [employee lawsuits](#)

EXHIBIT 14

April 29, 2014

HUFF
POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning - make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

Follow Janice Harper on Twitter: www.twitter.com/Janice_Harper

6 people are discussing this article with **11 comments**

Comments are closed on this entry.

Highlighted Most Recent Oldest Most Faved My Conversations

Pippen
287 Fans

2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

FAVE SHARE MORE

DHC

SUPER USER · 56 Fans

1

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

FAVE SHARE MORE

kjk326

2 Fans

Excellent article, right on topic. I went through this nightmare & found just how chilling & hostile a formerly friendly environment can become overnight. People who were your close friends hesitate to talk to you and avoid being seen with you. Your every move is put under the microscope and twisted into some type of bad behavior while the person who committed the illegal act is lauded and promoted and you are made to feel like a social outcast at best and I say this even though in the end I prevailed. You are left so emotionally drained, sadly it seems to be the American way; forget ethics, it's the dollar that prevails. Most of all I don't know how HR people sleep at night when they defend someone they know clearly committed an illegal act,

10 JAN 2012 8:34 PM

FAVE SHARE MORE

ARTICLE AUTHOR

Janice Harper

HUFFPOST BLOGGER · 218 Fans

Thank you for sharing your experience. I think it's significant that you say in the end you prevailed -- sadly, that is the sixth myth -- that it will all be worth it. It rarely is. The toll on the worker who pursues an employment claim is enormous, and few attorneys, no matter how skilled, adequately prepare plaintiffs for what's up ahead. I'm so sorry you had to go through it.

Yet we have made great advances in working conditions in the U.S. in part due to lawsuits, and there are cases where workers are left with no recourse but to turn to the courts. In those cases, the more a person knows what to expect and how to be prepared, the better the emotional outcome. Thank you again for sharing your story.

10 JAN 2012 8:55 PM

FAVE SHARE MORE

3 PEOPLE IN THE CONVERSATION

Read Conversation →

noahmarder

512 Fans · Exposing the regressive lies, one by one

There is no justice in this country. What else is new? Risk/reward probably favors stealing from your employer rather than suing them. At least with theft, your career is ruined only if you get caught. You also have a better chance of stealing significant money than of winning anything but an airtight case. I don't see a moral problem either, so long as what is stolen doesn't exceed the damage done by the employer, plus the effort required for the theft, plus the chance of being caught multiplied by the penalty

for being caught. It is the employer, after all, who has taken away any legal remedies through the retaliation mechanisms described in the article.

10 JAN 2012 9:09 PM

FAVE SHARE MORE

Pippen

287 Fans

If you think all of that is bad apply it to Texas where employment is an "at will" state. Another way of putting this would be outright slavery and the slave master can fabricate reality on how they feel that morning and your life is forever changed.

America sets itself apart from 3rd world countries with the argument that we have a

- 1 Superior Justice System
- 2 Freedom of religion
- 3 Separation of Church and State
- 4 Opportunity to pursue your capitalist dreams of career and family
- 5 That taxes pay for your well being (roads, FDA, national safety etc..)
- 6 National security (threat of invasion and subjugation by an enemy rule...)
- 7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

FAVE SHARE MORE

EXHIBIT 15

ILYM | GROUP, Inc.

C L A S S A C T I O N A D M I N I S T R A T I O N

Case Name: Kurkhill v. Kendo

Wednesday, October 8, 2025

Requesting Attorney:

Emily Houny Ly
The Spivak Law Firm
emily@spivaklaw.com
818.205.9033

ILYM Group Contact:

Lisa Mullins
ILYM Group, Inc.
Lisa@ilymgroup.com
714.878.8836

Estimate For Administrative Solutions: Class & PAGA

KEY ASSUMPTIONS	
Total Number of Class Members	200
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	Yes
Case Duration (Years)	1

Summary of ILYM Group, Inc.'s Fees & Expenses

Case Startup:	\$325.00
Project Management:	\$2,745.00
Notification & Mailing:	\$693.00
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$2,842.00
Case Conclusion:	\$845.00

Estimated ILYM Fees & Expenses: \$7,450.00

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Kurkhill v. Kendo

Wednesday, October 8, 2025

Requesting Attorney's Name: Emily Hounq Ly

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$325.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	1	\$70.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
ILYM Group Static Website	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$75.00	1	\$75.00
Toll Free Customer Service Representative	Flat Fee	\$100.00	1	\$100.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$2,745.00

NOTIFICATION & MAILING				
Fulfillment of Notice, English and Spanish	Per Piece	\$1.50	200	\$300.00
USPS First Class Postage	Per Piece	\$0.85	200	\$170.00
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	30	\$60.00
Storage, Photocopies, Deliveries	Flat Fee	\$163.00	1	\$163.00

Subtotal \$693.00

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Kurkhill v. Kendo

Wednesday, October 8, 2025

Requesting Attorney's Name: Emily Hounq Ly

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$1.00	200	\$200.00
USPS First Class Postage	Per Piece	\$0.74	200	\$148.00
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	20	\$30.00
Reminder Postcard for Uncashed Checks	Per Piece	\$0.90	60	\$54.00
Preparation of Taxes	Hourly	\$120.00	3	\$360.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal **\$2,842.00**

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Process Unclaimed Funds	Flat Fee	\$500.00	1	\$500.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal **\$845.00**

Estimated ILYM Fees & Expenses: **\$7,450.00**

ILYM Group's Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the permissible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 16



October 9, 2025

CASE ASSUMPTIONS

Class Members	200
Opt Out Rate	1%
Opt Outs Received	4
Total Class Claimants	196
Subtotal Admin Only	\$7,463.22

Flat Fee Total **\$7,000.00**
For 200 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: Kurkhill v. Kendo, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
 Contact Number: 949.331.0131
 Email: mike@phoenixclassaction.com

Requesting Attorney: Emily Houg Ly
 Firm: The Spivak Law Firm
 Contact Number: (818) 205-9033
 Email: emily@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
 Estimate is based on **200** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	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	28	\$56.00
NCOA (USPS)	\$40.00	1	\$40.00
Total			\$596.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Language Translation	\$900.00	1	\$900.00
Data Merge & Duplication Scrub	\$0.10	200	\$20.00
Notice Packet & Opt-Out Form	\$1.35	200	\$270.00
Estimated Postage (up to 2 oz.)*	\$0.90	200	\$180.00
Static Website	\$200.00	1	\$200.00
Total			\$1,770.00

* 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	\$70.00	1	\$70.00
Skip Tracing Undeliverables	\$1.00	30	\$30.00
Remail Notice Packets	\$1.00	27	\$27.00
Estimated Postage	\$0.90	27	\$24.30
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$251.30

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	5	\$275.00
Deficiency & Dispute Letters	\$10.00	0	\$0.00
Case Manager	\$85.00	3	\$255.00
Total			\$880.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$135.00	1	\$135.00
Disbursement Review	\$135.00	1	\$135.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$135.00	1	\$135.00
Check Run Setup & Printing	\$135.00	2	\$270.00
Mail Class Checks *	\$0.90	196	\$176.40
Estimated Postage	\$0.70	196	\$137.20
Total			\$1,178.60

* 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	\$70.00	1		\$70.00
Remail Checks (Postage Included)	\$2.00	41		\$82.32
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	4		\$340.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Total				\$2,787.32

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$7,463.22



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 17

CASE NAME: KURKHILL v KENDO

Requesting Paralegal: Emily Houny Ly
Plaintiff or Defense: Plaintiff
Firm Name: The Spivak Law Firm
Telephone: (818) 205-9033
Email: emily@spivaklaw.com

Date: October 16, 2025
Prepared By: Timothy Phillips
 50 Corporate Park, Irvine CA 92606
 Tim@CPTGroup.com
Direct Number: (818) 415-2703
Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Class Size: 200 Opt-Out Filing Rate: 1.5% No. of Checks Issued: 197 Language Translation Services: Yes Settlement Website: Static Website Notice Procedures: Mail	Undeliverable Mail Rate: 10% Payment Option: Check Unclaimed Funds: SCO Postage Total: \$391.50 Grand Total: \$12,727.13 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	2	\$190.00
Programming: Data Base Setup	\$150.00	2	\$300.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
Sub Total:			\$2,190.00

DIRECT MAIL NOTIFICATION

CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible. A detailed notice and a one-page opt-out form will be mailed in English and Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
XML Lex ID Skip Trace	\$0.85	20	\$17.00
Print & Mail Notice Packets	\$1.50	200	\$300.00
First-Class Postage (up to 2 oz.)*	\$1.03	200	\$206.00
Sub Total:			\$848.00

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

According to CPT's historical data, 10% of the notices are returned as undeliverable. Upon notification from USPS, CPT performs a skip trace to locate a current address. Typically, 70% of the undeliverable notice packets are eligible for remailing with an updated address.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	20	\$10.00
Skip Trace for Best Address	\$1.00	18	\$18.00
Print & Remail Notice Packets	\$1.50	14	\$21.00
First-Class Postage (up to 2 oz.)	\$1.03	14	\$14.42
Sub Total:			\$123.42

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	3	\$7.50
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.74	1	\$0.74
Review & Process Deficiency Responses	\$10.00	1	\$10.00
Sub Total:			\$324.74

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	40	\$120.00
Sub Total:			\$420.00

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholding processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	197	\$19.70
Sub Total:			\$454.70

DISTRIBUTION SERVICES

CPT will establish a 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF). Upon Final Approval, CPT will perform the required settlement payment calculations, and once approved by the parties, CPT will issue a (MICR) check to all eligible claimants. CPT will also issue an IRS Form 1099 and/or IRS Form W-2 when applicable. CPT utilizes the bank's Payee Positive Pay to prevent check fraud and performs monthly account reconciliations for the QSF bank account. Undeliverable checks are skip-traced to obtain a current address and are remailed accordingly. Requests for check reissues will be processed throughout the check-cashing period. CPT's administration of the QSF will continue for a maximum duration of one year following the initial distribution of funds.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	197	\$492.50
First-Class Postage (up to 1 oz.)	\$0.74	197	\$145.78
Project Supervisor: Account Reconciliation	\$150.00	12	\$1,800.00
Update Undeliverable Checks Database	\$0.50	10	\$4.93
Skip Trace for Best Address	\$1.00	10	\$9.85
Remail Undeliverable Checks	\$2.50	9	\$22.50
First-Class Postage (up to 1 oz.)	\$0.74	9	\$6.66
Re-Issue Checks as Required	\$5.00	8	\$40.00
First-Class Postage (up to 1 oz.)	\$0.74	8	\$5.92
Sub Total:			\$4,518.14

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	41	\$6.15
Project Manager: Reporting & Remittance	\$95.00	2	\$190.00
Project Supervisor: Review of Report	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$11.98	1	\$11.98
Add'l Account Recons	\$150.00	3	\$450.00
Sub Total:			\$808.13

Total Administration Costs: \$12,727.13

Courtesy Discount: -\$4,227.13

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. Client is aware that CPT may receive financial benefits, including discounts on certain banking services and competition for services that ensure eligibility for FDIC deposit insurance or in connection with the establishment of QSF accounts. Client agrees that any such financial benefit may be retained by CPT as additional compensation for CPT's services.
 8. **Term and Termination.**
 - a) **Term.** The Term is set forth in the Bid. The Agreement may be renewed by mutual written agreement of the parties.
 - b) **Termination for Cause.** Either Party may immediately terminate this Agreement if the other Party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching Party's receipt of written notice describing the breach in reasonable detail.
 - c) **Bankruptcy Events.** A Party may immediately terminate this Agreement if the other Party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) **Effect of Termination.** Immediately following termination of this Agreement, upon written request, Member Data may be retrieved via the secure FTP site in the same format in which the Member Data was originally input into the Software, at no additional charge. Alternatively, Member Data can be returned in a mutually agreed format at a scope and price to be agreed upon. CPT will maintain a copy of Member Data and Member Content for no more than four (4) years following the date of the final check cashing deadline for Members under the Settlement Agreement, after which time any Member Data and Member Content not retrieved will be destroyed.
 - e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
 9. **Confidentiality.** Each Party agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such Party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such Party uses to protect its own confidential information; provided, however, that such Party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
 - a) **Compelled Disclosure.** If receiving Party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such Party shall (i) promptly notify the other Party, (ii) reasonably cooperate with the other Party in such Party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each Party is advised by its counsel in writing is legally required to be disclosed.
 - b) **Remedies.** If either Party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other Party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as monetary damages.
 10. **Intellectual Property.** CPT retains all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. CPT does not claim any ownership rights to Member Data.
 11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "**Covered CPT Parties**") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "**Damages**") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Member Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
 12. **Warranties.** Each Party represents and warrants to the other Party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such Party; (iii) the Agreement is a legally valid and binding obligation of such Party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE
 13. **Liability.**
 - a) **Liability Cap.** EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CLIENT AND/OR THE PARTIES TO THE CASE TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT,

REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
 - b) Force Majeure. Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such Party's reasonable control, provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
 - c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
 - d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the Parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
 - e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by the Parties.
 - f) Assignment. Neither Party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other Party's prior written consent; provided, however, either Party, without the consent of the other Party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such Party, where the responsibilities or obligations of the other Party are not increased by such assignment and the rights and remedies available to the other Party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
 - g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
 - h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical

data ("**Statistical Data**") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such Applicable Laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other Party as set forth on the Bid or at such other address as may hereafter be furnished in writing by either Party hereto to the other Party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each Party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither Party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT may use subcontractors to perform Client-specific Services; provided, however, that CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either Party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Acceptance. If, when requested in writing by Client, CPT then provides any Service to Client, whether or not such Services were specified in the original Bid, these Terms and Conditions shall apply to the provision of such Services and be deemed accepted and approved by Client concerning such Services.
- q) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 18