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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiffs,

vs.

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company; Express Services, Inc., a Colorado corporation dba Express Employment Professionals; and DOES 2–50, inclusive,

Defendants.

Case No. 3:21-cv-01120-AHG

PLAINTIFFS' NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Action filed:	June 16, 2021
Hearing Court:	2125, The Honorable Allison H. Goddard

Submitted Herewith Under Separate Cover:

1. Memorandum of Points and Authorities;
2. Declaration(s) of David Spivak, Alexandra K. Piazza, and Walter L. Haines; and
3. [Proposed] Order

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TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez (collectively "Plaintiffs") hereby move this Court for an order: (1) granting class certification of the Settlement Class solely for settlement purposes pursuant to Federal Rules of Civil Procedure § 23; (2) preliminarily approving the Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement" or "Settlement Agreement")[1] between Plaintiffs and Defendants O'Reilly Auto Enterprises, LLC ("O'Reilly") and Express Services, Inc. ("Express") (collectively, "Defendants") (Plaintiffs and Defendants are referred to below collectively as the "Parties"), (3) appointing David Spivak of The Spivak Law Firm, Alexandra K. Piazza of Berger Montague PC, and Walter L. Haines of United Employees Law Group as Class Counsel; (5) appointing Plaintiffs as Class Representatives ("Class Representatives"); (6) approving the use of the proposed notice procedures; (7) directing that notice be mailed to the proposed Settlement Class; and (8) scheduling a hearing date for motion for final approval of class action settlement and awards of attorneys' fees and costs.

The "Settlement Class" or "Class Members" consists of all individuals employed by one or both Defendants as non-exempt, hourly employees, either directly or indirectly through staffing agencies, and who worked at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time during the Class Period. Settlement ¶ 1.5. "Class Period" means the period from July 5, 2018 to May 22, 2024. *Id.* ¶ 1.12.

This Motion is made on the following grounds: (1) the Settlement Class meets all the requirements for class certification for settlement purposes only under

[1] The Settlement Agreement is attached as Exhibit 1 to the Declaration of David Spivak ("DS"), which is submitted herewith under a separate cover. Unless otherwise stated, all capitalized terms have the meaning ascribed to them in the Settlement Agreement.

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Federal Rules of Civil Procedure § 23; (2) Plaintiffs and their counsel are adequate to represent the Settlement Class; (3) the Settlement reflects a fair, adequate, and reasonable compromise of all disputed claims in view of Defendants' potential liability exposure as compared against the risks of continued litigation; (4) the proposed notice procedures and related forms adequately apprise the Class Members of their rights under the Settlement and fully comport with due process; and (5) in view of the foregoing, notice should be disseminated to the Class Members and a hearing date for motion for final approval of class action settlement, and awards of attorneys' fees and costs should be set.

The Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of David Spivak, Alexandra K. Piazza, and Walter L. Haines, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 24, 2024

By: /s/ David Spivak
DAVID G. SPIVAK, Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, and all others similarly situated

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Plaintiffs,

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PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Action filed: June 16, 2021
Hearing Court: 2125, The Honorable Allison H. Goddard

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Plaintiffs Jeffrey Pipich ("Pipich"), Eve Storm ("Storm"), Gary Cull ("Cull"), Melissa Kolakowski ("Kolakowski"), and Daniel Lopez ("Lopez") (collectively "Plaintiffs") submit this memorandum of points and authorities in support of their unopposed motion for preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement")[2], which provides for a Gross Settlement Amount ("GSA") of $4,100,000.00 in compromise of all disputed claims on behalf of all individuals employed by one or both Defendants as non-exempt, hourly employees, either directly or indirectly through staffing agencies, and who worked at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time during the Class Period of July 5, 2018 to May 22, 2024. Through this Motion, Plaintiffs respectfully request for this Court to (1) provisionally certify the below-defined Class for settlement purposes only under Federal Rules of Civil Procedure § 23 ("Rule 23"); (2) preliminarily approve the Settlement; (3) preliminarily appoint Plaintiffs as Class Representatives; (4) appoint David G. Spivak of The Spivak Law Firm, Alexandra K. Piazza of Berger Montague PC, and Walter L. Haines of United Employees Law Group as Class Counsel; (5) approve the proposed notice procedures and related forms; and (6) schedule a final approval hearing.

This Court should grant Plaintiffs' motion because: (1) for settlement purposes, the Class meets the requirements for class certification under Rule 23; (2) the Settlement warrants preliminary approval based on all indicia for fairness,

[2] The Settlement is attached as Exhibit ("Ex.") 1 to the Declaration of David Spivak ("DS"), which is submitted herewith under a separate cover.

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reasonableness, and adequacy; (3) for settlement purposes, each Plaintiff is adequate to serve as a Class Representative; (4) Plaintiffs' attorneys are adequate to serve as Class Counsel; (5) the proposed notice procedures fully comport with due process and adequately apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement Class Members an opportunity to be heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiffs' Motion in its entirety and preliminarily approve the Settlement.

II. BACKGROUND

O'Reilly is an auto parts distributor and Express is a temporary employment agency. DS ¶ 10. Defendant O'Reilly employed Pipich in California as a driver and warehouse worker from about July 1, 2015 until February 1, 2021. *Id.* Defendants employed Storm in California as a warehouse worker from about November 30, 2020 until January 7, 2021. *Id.* Defendant O'Reilly employed Cull in California as a warehouse worker from about December 4, 2018 until September 29, 2019. *Id.* Defendant O'Reilly employed Kolakowski in California as a warehouse worker from about October 29, 2019 until January 27, 2022. *Id.* Defendant O'Reilly employed Lopez in California as a warehouse worker from about June of 2017 until October 2, 2023. *Id.*

A. The Claims and Procedural History

On May 11, 2021, Pipich electronically submitted written notice to the LWDA of O'Reilly's violations of Labor Code §§ 510, 512, 558, 1174, 1182.11, 1194, and 1197. DS ¶ 11; Settlement ¶ 2.1.

On June 16, 2021, Pipich filed his FLSA collective action Complaint in the United States District Court for the Southern District of California. It was assigned to the Honorable Judge M. James Lorenz. Pipich's FLSA claims in the First Amended Complaint were dismissed on March 14, 2022. DS ¶ 12; Settlement ¶ 2.2.

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On July 22, 2021, Pipich filed his First Amended Complaint asserting, among other things, PAGA claims on behalf of himself and similarly aggrieved employees for Defendant O'Reilly's Labor Code violations for unpaid wages for time spent in Covid-19 and security screenings, meal and rest break violations, failure to reimburse for business expenses, inaccurate wage statements, untimely wages, and related violations. DS ¶ 13; Settlement ¶ 2.3.

By letter dated August 11, 2021, Storm gave written notice by certified mail to the LWDA of violations of the California Labor Code. Storm filed her PAGA representative action in the Riverside County Superior Court on October 15, 2021, case no. CVRI2202748. The bases for Storm's private attorney general action are Defendants' failure to pay all wages earned at the correct rates, including for time spent in security checks, failure to provide meal breaks, failure to authorize and permit rest breaks, failure to reimburse for expenses, failure to provide accurate and complete itemized wage statements, untimely wages during and at the conclusion of employment, failure to provide toilet and storage facilities, lockers, and acceptable work temperatures, and failure to maintain accurate employment records. Settlement ¶ 2.4. That action remains pending. DS ¶ 14.

On January 4, 2022, Pipich submitted an Amended PAGA Notice to the LWDA for violations of Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 and Wage Order 9. DS ¶ 15; Settlement ¶ 2.5.

On April 7, 2022, Pipich filed a Second Amended Complaint asserting only representative PAGA claims to recover civil penalties for violations of the Labor Code, including sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2350, and 2802. DS ¶ 16; Settlement ¶ 2.6.

On November 22, 2021, Storm filed an Amendment to Complaint to add O'Reilly in place of Doe Defendant 1. DS ¶ 17; Settlement ¶ 2.7.

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On January 5, 2022, Storm sent a supplemental written notice by certified mail to the LWDA. On January 27, 2022, the Parties agreed to stay the Storm PAGA case pending the resolution of the first filed Pipich PAGA case. DS ¶ 18; Settlement ¶ 2.8.

On June 15, 2022, Pipich and O'Reilly participated in an early neutral evaluation conference in the United States District Court for the Southern District of California. The Parties engaged in settlement negotiations at that time. The disputes between the Parties did not resolve at that time. DS ¶ 19; Settlement ¶ 2.9.

On July 5, 2022, Storm filed a class action lawsuit against Defendants, *Eve Storm v. Express Services, Inc. dba Express Employment Professionals, at al.*, Superior Court for the State of California, County of Riverside, Case No. CVR12202748. Storm's Class Action Complaint presented the following causes of action: Failure to pay all wages earned at the correct rates; Failure to provide meal periods; Failure to authorize and permit rest breaks; Failure to reimburse for expenses; Waiting time penalties; and Unfair competition. DS ¶ 20; Settlement ¶ 2.10.

On August 26, 2022, Defendant O'Reilly removed Storm's class action lawsuit to the United States District Court for the Central District of California, case no. 5:22-cv-01510 FLA (MARx). The parties in the Storm Action entered into a tolling agreement and dismissed the class action pending the results of a mediation. DS ¶ 21; Settlement ¶ 2.11.

On February 14, 2023, Pipich and Storm participated in mediation with Defendants and mediator Ann Kotlarski, Esq. The disputes between all the Parties did not resolve at that time. DS ¶ 22; Settlement ¶ 2.12.

On April 5, 2023, Storm filed another class action lawsuit against Defendants, titled *Eve Storm v. Express Services, Inc. dba Express Employment Professionals, at al.*, United States District Court, Central District of California,

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Case No. 5:23-CV-00597-FLA-MAR. Storm's Class Action Complaint presented the following causes of action: Failure to pay all wages earned at the correct rates; Failure to provide meal periods; Failure to authorize and permit rest breaks; Failure to reimburse for expenses; Waiting time penalties; and Unfair competition. Defendants subsequently filed a motion to compel arbitration of this case. DS ¶ 23; Settlement ¶ 2.13.

On April 14, 2023, Pipich filed a Third Amended Complaint for Defendant O'Reilly's alleged failure to: (1) Provide all rest and meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned for all hours worked at the correct rates of pay; (4) Issue accurate and complete itemized wage statements; (5) Timely pay wages during and upon termination of employment and; (6) Provide toilet and storage facilities, lockers, change rooms, and acceptable work temperatures, and (7) Maintain accurate employment records. DS ¶ 24; Settlement ¶ 2.14.

On June 12, 2023, Cull filed a class action complaint in the Superior Court of the State of California, County of Riverside, case no. CVRI2303008. It contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hour Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; and (5) Unfair Competition. On August 14, 2023, Defendant O'Reilly removed the Cull lawsuit to the United States District Court for the Central District of California, case no. 5:23-cv-01623-FLA-MAR. DS ¶ 25; Settlement ¶ 2.15.

On December 26, 2023, Cull filed a First Amended Class Action Complaint adding Kolakowski and Lopez as named plaintiffs. It contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hours Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; (5) Waiting Time Penalties; and (5) Unfair Competition. DS

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¶ 26; Settlement ¶ 2.16.

On February 5 and 21, 2024, the Parties participated in mandatory settlement conferences before Honorable Magistrate Judge Jill L. Burkhardt which led to this Agreement to settle the Action. DS ¶ 27; Settlement ¶ 2.17.

On May 2, 2024, the United States District Court for the Central District of California dismissed the Storm and Cull matters without prejudice. DS decl., ¶ 28, **Exhibit 2**.

On May 16, 2024, pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave additional written notice to Defendants and the LWDA of Defendants' violations of the Labor Code. Settlement ¶ 2.18; DS ¶ 29, **Exhibit 3**.

On May 21, 2024, Pipich filed a Fourth Amended Complaint that added Storm, Cull, Kolakowski, and Lopez as additional Plaintiffs and Express Services, Inc. in place of Doe Defendant 1. It contains the claims made in the prior actions of the Plaintiffs recounted above and additional factual allegations investigated and discovered by the Plaintiffs which were part of the settlement negotiations at the mediation and mandatory settlement conferences. The Fourth Amended Complaint is the "Operative Complaint." Settlement ¶ 2.19; DS ¶ 30, **Exhibit 4**. The Fourth Amended Complaint contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hours Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Unfair Competition; and Civil Penalties (Lab.Code §§ 2698, *et seq.*). *Id.*

B. Sampling

On September 12, 2022, Plaintiffs requested that Defendants informally disclose documents and data to enable Plaintiffs to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations

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periods applicable to Plaintiffs' claims. DS ¶ 31. Plaintiffs also requested a reasonable, randomly selected sample of Defendants' time, payroll, and expense records, and related personnel records. *Id.* Finally, Plaintiffs requested Defendants' written policies applicable to the claims at hand and asked that Defendants identify any and all similar claims against them.

The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendants produced Plaintiffs' entire personnel files (including policies and agreements they signed and acknowledged) and copies of their relevant company written policies. DS ¶ 32.

The Defendants disclosed that there have been similar claims against them. Defendants disclosed and/or Plaintiffs discovered the following similar claims for unpaid minimum wages, overtime wages, meal, rest period violations, off-the-clock COVID-19 and security screenings:

(A) *Stephanie Perez v. O'Reilly Auto Enterprises, LLC,* Superior Court of the State of California for County of San Joaquin, case no. STK-CV-UOE-2023-7289, filed on July 14, 2023, and amended on September 23, 2023. This is a class and PAGA action for (1) Failure To Provide Duty-Free Meal Periods; (2) Failure To Provide Duty-Free Rest Periods; (3) Failure To Pay Minimum Wages; (4) Failure To Pay Overtime Wages; (5) Unfair, Competition; (6) Failure To Provide Accurate Wage Statements; (7) Failure To Pay All Wages Owed Upon Termination; and (8) Civil Penalties Under PAGA.; and

(B) *Sally Fonseca v. O'Reilly Auto Enterprises, LLC*, Superior Court of the State of California for County of San Joaquin, case no. STK-CV-UOE-2024-354, filed on January 11, 2024. This is a class and PAGA action for (1) Failure To Pay Minimum Wages; (2) Failure To Pay Overtime Wages; (3) Meal Period Liability; (4) Rest Break Liability; (5) Failure To Provide Accurate Itemized

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Employee Wage Statements; (6) Violation Of Labor Code Section 1174; (7) Violation Of Labor Code Sections 2102 And 2103; (8) Failure To Pay Wages Timely And Upon Separation Of Employment; And (9) Violation Of Unfair Competition Law. DS ¶ 36. These matters settled on an individual basis. *Id.*

Before the mediation, Defendant O'Reilly represented that it had directly employed 2,889 putative class members directly during the period of May 11, 2020 to November 15, 2022 and approximately 3,587 putative class members during the period of July 5, 2018 to November 15, 2022. Plaintiffs estimated approximately a total of 4,656 putative class members during the period of May 11, 2020 to November 15, 2022 and 5,854 putative class members during the period of July 5, 2018 to November 15, 2022 who were employed both directly and indirectly through staffing agencies. There were records for 169 employees with both time and payroll records in the random sample Defendants and Plaintiffs chose. DS ¶ 33. Plaintiff's data analyst, James Toney, evaluated these sample records to determine shift, workday, and workweek lengths, meal period timing, paychecks issued, overtime hours, and hourly rates of pay (among other things). Subsequently, Plaintiffs gathered the personnel files of dozens of employees from Defendants and Defendants produced additional data up and through the final settlement conferences with Magistrate Judge Burkhardt that included the class size (both direct hires and temp workers), the aggrieved employees under PAGA, the number of pay checks, the number of workweeks, and additional data points through November of 2023. *Id.*

Plaintiffs retained James Toney, a data analyst, to analyze the sample. Plaintiffs also employed the Raosoft[3] Sample Size calculator

[3] Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software programs for information gathering and analysis. The family of survey

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(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 32%, a confidence level of 95%, and a population size of 5,750, the Raosoft Sample Size Calculator recommended a sample of 10. DS ¶ 34, **Exhibit 5**. Thus, the sample population that Plaintiffs' data analyst evaluated is statistically reliable. *Id.*

C. Mediation and Settlement Conferences

Following much of the foregoing informal discovery and exchange of information, the Parties engaged in settlement discussions. On June 15, 2022, Pipich and O'Reilly participated in an early neutral evaluation conference in the United States District Court for the Southern District of California, the Honorable Magistrate Judge Jill L. Burkhardt presiding. The Parties engaged in settlement negotiations at that time. The disputes between the Parties did not resolve at that time. Settlement ¶ 2.9. On February 14, 2023, Pipich and Storm participated in mediation with Defendants and mediator Ann Kotlarski, Esq. The disputes between all the Parties did not resolve at that time. *Settlement* ¶ 2.12. On February 5 and 21, 2024, the Parties participated in mandatory settlement conferences before Honorable Magistrate Judge Jill L. Burkhardt which led to this Agreement to settle the Action. Settlement ¶ 2.17. During these settlement proceedings, the Parties participated in multiple days of productive negotiations and ultimately reached

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software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage advertises that is it "database web survey software for gathering information." http://www.raosoft.com/. It also advertises, "The parameters of the sample size calculation are something that you choose." http://www.raosoft.com/suggestreading.html.

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agreement on a class-wide settlement. During the proceedings, each side, represented by his / 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. DS ¶ 35.

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class and Aggrieved Employees Definition

The Settlement defines the Settlement Class as all individuals employed by one or both Defendants as non-exempt, hourly employees, either directly or indirectly through staffing agencies, and who worked at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time during the Class Period. Settlement ¶ 1.5. The Class Period is July 05, 2018 to May 22, 2024. Settlement ¶ 1.12. The "Aggrieved Employees" are all class members who were employed by one or both Defendants in California and classified as non-exempt, hourly employees, either directly or indirectly through staffing agencies, at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time during the PAGA Period. Settlement ¶ 1.4. The "PAGA Period" means the period from May 11, 2020 to May 22, 2024. Settlement ¶ 1.30.

B. Monetary Terms

Gross Settlement Amount. Defendant O'Reilly promises to pay $4,100,000.00 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. Defendant O'Reilly has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraphs 6.1 and 6.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants. Settlement ¶ 3.1.

Subject to Court approval, the Administrator will make and deduct the

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following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

To Plaintiff: Class Representative Service Payments to the Class Representatives of not more than $55,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment each Class Representative is entitled to receive as a Participating Class Member). This total will be divided as follows: (1) $22,500.00 to Jeffrey Pipich; (2) $10,000.00 to Eve Storm; (3) $7,500 to Gary Cull; (4) $7,500 to Melissa Kolakowski; and (5) $7,500 to Daniel Lopez. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than fourteen (14) calendar days prior to the Response Deadline. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. Plaintiffs and the Class Representatives shall not have the right to revoke or cancel this Agreement if the Court does not approve any or all of the requested Class Representative Service Payments. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. The Class Representatives agree to provide the Administrator with an updated IRS Form W-9 before the Class Representative Service Payments are issued to the extent required by the Settlement Administrator. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments and shall hold Defendants harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Payments. Settlement ¶ 3.2.1

To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount (i.e., 33 and 1/3%) which is estimated to be $1,366,666.67, and a Class Counsel Litigation Expenses Payment of not more than $120,000.00. Plaintiffs and/or Class Counsel will file a motion for Class Counsel

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Fees Payment and Class Litigation Expenses Payment no later than fourteen (14) calendar days prior to the Response Deadline, which shall be decided as part of 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. This Agreement is not contingent upon the Court's decision to award Class Counsel any particular amount, or any amount, for Class Counsel Fees Payment or Class Litigation Expenses Payment. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Counsel shall be solely responsible for the division and distribution of any and all Court-approved Class Counsel Fees Payment and Class Litigation Expenses Payment. Class Counsel agrees to release Defendants and the Released Parties from any responsibility for and liability arising out of or related to the division and distribution of any Court-approved Class Counsel Fees Payment and Class Litigation Expenses Payment. Class Counsel agrees to assume all responsibility for the payment of any liens asserted by any former attorneys in its firm and agrees to indemnify and hold harmless Defendants for any such lien. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel agrees to provide the Administrator with an executed IRS Form W-9 before the Class Counsel Fees Payment and Class Litigation Expenses Payment are issued to the extent required by the Administrator. 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 Defendants harmless, and indemnifies Defendants, from any claim or liability for taxes, penalties, or interest arising as a result of the Class Counsel Fees Payment or the Class Litigation Expenses Payment. Settlement ¶ 3.2.2.

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To the Administrator: An Administration Expenses Payment not to exceed Forty Thousand Dollars and Zero Cents ($40,000.00) 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 less than $40,000.00, the Administrator will retain the remainder in the Net Settlement Amount. Settlement ¶ 3.2.3.

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

C. Timing of Payments

Defendant O'Reilly shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) calendar days after the Effective Date. Settlement ¶¶ 4.3-4.4.

Within fourteen (14) calendar days after Defendant O'Reilly 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 Payments. 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. *Id.*

D. Calculation of Settlement Shares

"Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of

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Workweeks worked during the Class Period. Settlement ¶ 1.22. An Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement ¶ 3.2.4.

"Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Workweeks worked during the PAGA Period. Settlement ¶ 1.23. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties $102,500.00 by the total number of PAGA Workweeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Workweeks. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement ¶ 3.2.5.1.

E. Apportionment of Settlement Shares

10.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 90.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Settlement ¶ 3.2.4.1. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Settlement ¶ 3.2.5.2.

F. The Releases

Effective on the date when Defendant O'Reilly fully funds the entire Gross

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Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

Plaintiffs' Releases: Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences of every kind and nature, actual or potential, known and unknown, which exist or could arise out of their employment and/or the end of their employment with Defendants, through and including the date of execution of this Agreement, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notices, or ascertained during the Action and released under paragraph 6.2 of the Settlement Agreement ("Plaintiffs' Releases"). Plaintiffs' Releases do not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agrees, nonetheless, that Plaintiffs' Releases shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them. Settlement ¶ 6.1.

Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Releases, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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> 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.

Settlement ¶ 6.1.1.

Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims stated in the Operative Complaint and those based solely upon the facts alleged in the Operative Complaint. Upon entry of Judgment and funding of the Gross Settlement Amount, the Defendants and their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and agents shall be entitled to a release from the Settlement Class members of all class claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, of any nature and description whatsoever, that are either asserted in the Action, or could have been asserted in the Action based on the facts, claims, and theories plead in the Operative Complaint on file at the time of final approval, including but not limited to, Labor Code sections 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders which occurred during the Class Period. ("Released Class Claims") Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

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Released Class Claims also includes all claims that were or that could have been alleged in the Action based on the facts stated in the Operative Complaint, including but not limited to any claims for violations of the California Labor Code, and the relevant Wage Orders. The term "Released Class Claims" also includes Plaintiffs' claim that Defendants are liable for the attorneys' fees incurred to prosecute this Action on behalf of Class Members, including fees incurred for the services of Class Counsel, and any claim that Defendants are liable for any other remedies, civil penalties, statutory penalties, or interest under California law based on the facts alleged in the Operative Complaint. The term "Released Class Claims" also includes all claims that the Class Members may have against the Released Parties relating to (i) the payment, taxation and allocation of attorneys' fees and costs to Class Counsel pursuant to this Agreement, and (ii) the payment, taxation, and allocation of the Class Representative Service Payments pursuant to this Settlement Agreement. Class Members may discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Class Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist or have existed, upon any theory of law or equity now existing. It is the intent of the Parties that the Final Approval Order and Judgement entered by the Court shall have full res judicata and collateral estoppel effect and be final and binding upon Class Members regarding the Released Class Claims. Settlement ¶ 6.2.

Release of PAGA Claims: Upon entry of Judgment and funding of the Gross Settlement Amount, Plaintiffs, on behalf of themselves and the State of California, and the Aggrieved Employees fully release and discharge Defendants and their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers,

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employees, and agents, from any and all claims for relief under the PAGA, based on the claims for penalties that could have been sought by the Labor Commissioner or Plaintiffs based on the facts and legal claims as alleged in the Operative Complaint at the time of final approval by Plaintiffs in the Action and Plaintiffs' notice letters to the LWDA including, but not limited to, Labor Code sections 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under the PAGA, which occurred during the PAGA Period. Plaintiffs do not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. Settlement ¶ 6.3.

G. Notice and Claims Process and Procedures

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, Workweeks, and PAGA Workweeks in the Class Data. Settlement ¶ 8.4.1.

Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar 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 with Spanish translation, if applicable. 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 Workweeks and PAGA Workweeks (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. Settlement ¶ 8.4.2.

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Not later than three (3) 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. Settlement ¶ 8.4.3.

The deadlines for Class Members' written Objections, Challenges to Workweeks (disputes), and Requests for Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) 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 with the re-mailed Class Notice. Settlement ¶ 8.4.4.

If the Administrator, Defendants or Class Counsel are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received 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 not later than fourteen (14) calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later. Settlement ¶ 8.4.5.

1. Disputes

Each Class Member shall have sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days

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for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Workweeks (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. 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 Workweeks 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 Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks to Defense Counsel and Class Counsel and the Administrator's determination of the challenges. Settlement ¶ 8.6.

2. Opting Out

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) 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 signed 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. The date of the postmark on the return mailing envelope or the date of the sent email shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Settlement ¶ 8.5.

The Administrator may not reject a Request for Exclusion as invalid because

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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. *Id.*

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' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement. *Id.*

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. Aggrieved Employees cannot exclude themselves from the PAGA portion of the Settlement and are eligible for an Individual PAGA Payment. *Id.*

3. Objecting

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 Payments. Settlement ¶ 8.7.

Participating Class Members may send written objections to the

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Administrator, by fax, email, or mail. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) calendar 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). The postmark on the return mailing envelope or the date of the sent email shall be the exclusive means used to determine whether an Objection has been timely submitted. To be valid, the written objection must state the factual and legal grounds for the objection to the Settlement. The written objection must be signed by the Class Member submitting it, and it must state the person's full name, address, telephone number, and email address (if applicable). A Participating Class Member who has submitted a timely objection may attend the Final Approval Hearing (or personally retain a lawyer to object and attend at the Participating Class Member's own cost). *Id.*

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

No Solicitation of Exclusions or Objections. The Parties agree to use their best efforts to carry out the terms of this Agreement. At no time shall the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit an Objection or a Request for Exclusion from the Agreement or to appeal from the Court's Final Approval Order. Class Counsel shall not represent Class Members with respect to any objections or appeals to this Agreement. The Parties are not precluded from contacting Class Members in an effort to encourage them to participate in the Settlement. *Id.*

H. Uncashed Checks

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 San Diego

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County Bar Foundation, a *cy pres* recipient agreed upon by the Parties and subject to the Court's approval. Settlement ¶ 4.4.3. The recipient, San Diego County Bar Foundation, is a nonprofit organization, foundation, or program of the type described in that subdivision. DS ¶ 37.

IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT CLASS

Purely for the Settlement presently before the Court, Plaintiffs move the Court to find that the Settlement meets the requirements for certifying a class under Federal Rule of Civil Procedure 23 ("Rule 23").[4]

A class action may be certified if all four prerequisites under Rule 23(a) are satisfied and at least one subsection under Rule 23(b) is met. *Doninger v. Pac. Nw. Bell, Inc.*, 564 F.2d 1304 (9th Cir. 1977). The requirements of Rule 23(a) are referred to as: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. *United Steel, Paper & Forestry, Rubber, Mfg. Energy v. Conoco Phillips Co.*, 593 F.3d 802, 806 (9th Cir. 2010). As will be discussed below, these requirements are met here. In addition, the Parties agreed to certification of the Class under Rule 23(b)(3) which has the added requirement of "predominance." *Id.* The fundamental question "is not whether . . . plaintiff [has] stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974). Defendants do not oppose certification for the purpose of settlement only. As such, the Parties seek provisional certification of the Class. Should the Settlement not be approved or not become final for any reason, the Parties agree no class will be certified, and Defendants' agreement to certify a class conditionally for settlement purposes only

[4] Although Defendants dispute Plaintiffs' ability to satisfy Rule 23's certification requirements, Defendants do not oppose class certification for settlement purposes only.

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will not be used in connection with any subsequent motion for class certification. As demonstrated below, Plaintiffs contend that, for settlement purposes, this action meets all of the requirements for certification under Rule 23(a) and Rule 23(b)(3).

A. For Purposes of Settlement, The Proposed Class Meets The Requirements of Rule 23(a).

1. Numerosity

Rule 23(a)(1) is typically referred to as "numerosity" in that it requires a class that is "so numerous that joinder of all members is impracticable." The term "impracticable" does not mean "impossible," and only refers to "the difficulty or inconvenience of joining all members of the class." *Advertising Specialty Nat'l Asso. V. Federal Trade Com.*, 238 F.2d 108, 119 (1st Cir. 1956).

O'Reilly estimates that there are approximately 5,750 Class Members. DS ¶ 39. Plaintiffs maintain that it would be impractical and economically inefficient to require each Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. The California Supreme Court has upheld a class of as few as 10 individuals. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955). In light of these considerations, the Settlement Class's membership is sufficiently numerous. DS ¶ 39. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695. Plaintiffs maintain that the Settlement Class is ascertainable because its members may be identified by reference to Defendants' records and Defendants have agreed to share the relevant information from their records to facilitate the settlement process. DS ¶ 38.

2. Commonality

Rule 23(a) requires that "there are questions of law or fact common to the class." However, "all questions of fact and law need not be common to satisfy the rule…[and] [t]he existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class. *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1019 (9th Cir.

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1998). The Ninth Circuit has held that commonality exists "where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). In light of the more lenient standard for certification of a settlement class, the Parties agree that for the purposes of the Settlement only, the claims of the Class Members all stem from the same sources. DS ¶ 40.

In this case, Plaintiffs assert all Class Members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related labor law violations, all of which Plaintiffs claim constitute unfair business practices and give rise to PAGA penalties. Plaintiffs assert that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendants failed to indemnify the class for all necessary business expenditures incurred during the discharge of their duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq*., with respect to the class. DS ¶ 40. Courts in the Ninth Circuit have found

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this sufficient to show commonality.[5]

3. Typicality

Rule 23(a) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." This requirement is "permissive" and requires only that the representative's claims are reasonably related to those of the absent class members. *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010).

Plaintiffs contend that their claims are typical for the purposes of certifying the Settlement Class. Plaintiffs assert that they, like absent Class Members, were subject to the same relevant policies and procedures governing their compensation, hours of work and meal and rest periods. Because Plaintiffs contend that they were subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiffs will determine Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiffs' claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiffs' claims are typical of the Class. DS ¶ 41.

4. Adequacy

Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately protect the interests of the class," Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

First, Class Counsel have supplied the Court with declarations to show that

[5] See, *e.g.*, *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 963 (9th Cir. 2013); *Cummings v. Starbucks Corp.*, No. CV 12-06345-MWF FFMX, 2014 WL 1379119, at *10 (C.D. Cal. Mar. 24, 2014); *Hopkins v. Stryker Sales Corp.*, No. 5:11-CV-02786-LHK, 2012 WL 1715091, at *5 (N.D. Cal. May 14, 2012) (citing cases).

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they are adequate to represent the Settlement Class and that they have significant experience in employment litigation generally, and wage and hour and employment-related class action litigation specifically. *See* DS ¶¶ 43-50; Declaration of Walter L. Haines ("Haines Decl.") ¶¶ 1-4; Piazza Decl., ¶¶ 4-9;. Thus, Plaintiffs' counsel are adequate to serve as Class Counsel.

Second, Plaintiffs contend that they are adequate class representatives. Plaintiffs and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendants during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiffs and the Class Members. DS ¶ 42. Moreover, Plaintiffs have demonstrated their commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing themselves to the risk of attorneys' fees and costs awards against them if this lawsuit had been unsuccessful. DS ¶ 42. Thus, Plaintiffs are adequate to serve as settlement class representatives. Accordingly, this Court should find that Plaintiffs and their counsel are adequate to represent the Settlement Class as required under Rule 23.

B. For Purposes of Settlement, the Proposed Class Meets the Requirements of Rule 23(b).

1. Common Issues Predominate.

In addition to the Rule 23(a) requirements, a court must find that common issues of law or fact "predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). With regard to the requirements of subsection (b), Rule 23(b)(3) allows class certification where common questions of law and fact predominate over individual questions and class treatment is superior to individual litigation. The predominance inquiry "tests whether proposed classes are

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sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). To determine whether common questions predominate, a court is to consider "the relationship between the common and individual issues." The proposed Class in this case is sufficiently cohesive to warrant adjudication by representation. Furthermore, because the "predominance" factor concerns liability, any variation in damages is insufficient to defeat class certification. *Leyva v. Medline Indus.*, 716 F.3d 510, 514 (9th Cir. 2013). Plaintiffs contend that all claims in this litigation are based on allegedly common, class-wide policies and procedures, and that liability could be determined on a class-wide basis. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1033 (2012). As noted above, the major issue of whether putative class members were able to take legally compliant meal and rest breaks, were properly paid for all hours worked at the correct rates of pay, and were reimbursed for business-related expenses, stem from purported policies and practices applicable to the Class as a whole.

2. The Class Action Device Is Superior.

To certify a class, the Court must also determine "that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. Proc. 23(b)(3). This requirement is met when certification will reduce litigation costs and promote greater efficiency. *See Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) ("Where class-wide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior").

Here, a class action is the superior mechanism because it will limit duplicative litigation and limit the burden on the Court for the settlement of the claims of over 5,750 employees. *See Lockwood Motors*, 162 F.R.D. at 582

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("Having concluded that common questions predominate, th[e] [superiority] requirement is readily satisfied in this case. Class prosecution of this action will limit duplicative litigation, limit the burden on this and other courts, and provide a uniform result for similarly situated parties.").

Plaintiffs further contend that 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. DS ¶ 51.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. Fed. R. Civ. P. 23(e). The overarching inquiry on a motion for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *See Williams v. Costco Wholesale Corp.*, 2010 WL 761122, *5 (S.D. Cal. March 4, 2010) ("[A]t the preliminary approval stage, the Court need only review the parties' proposed settlement to determine whether it is within the permissible 'range of possible judicial approval.'").

Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is "fair, reasonable and adequate."

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Rubenstein, 4 *Newberg on Class Actions* § 13:13 ("[T]he goal of preliminary approval is for a court to determine whether notice of the proposed settlement should be sent to the class, not make a final determination of the settlement's fairness"). That determination is made only after notice of the settlement has been given to the members of the class and after the class members have been given an opportunity to voice their views of the settlement or to be excluded from the settlement class. *See Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008) ("a full fairness analysis is unnecessary at this [preliminary] stage . . . The court, therefore, will simply conduct a cursory review of the terms of the parties' settlement for the purpose of resolving any glaring deficiencies before ordering the parties to send the proposal to class members.").

"At this stage, the court may grant preliminary approval of a settlement and direct notice to the class if the settlement: '(1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval.'" *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016); *Tinoco v. Hajoca Corp.*, 2019 WL 4239130, at *4 (C.D. Cal. June 18, 2019).

A. The Settlement Is The Product Of Serious, Informed, And Non-Collusive Negotiations.

The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator and a Magistrate Judge after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendants' estimated exposure. DS ¶ 52. A settlement for approximately 28.39% of the potential recovery (as discussed below) is a proportion substantially in excess of recovery proportions sanctioned by

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existing case law.[6] DS ¶¶ 53-54.

As discussed below, Plaintiffs' initial estimates did not realistically account for the risks presented in this case or the risk that a class will not be certified. Therefore, Plaintiffs believes a class settlement for $4,100,000.00 is fair and reasonable. DS ¶ 55.

Moreover, nothing about the settlement indicates collusion, with "subtle signs" of collusion absent: Plaintiffs' counsel do not stand to receive a disproportionate distribution of the settlement, there is no clear sailing provision on attorneys' fees, and there is no reversion of unawarded funds to Defendants. DS ¶ 56. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011).

B. The Settlement Has No Obvious Deficiencies And Does Not Grant Any Improper Preferential Treatment.

The relief provided in the Settlement will benefit all Class Members proportionally. Each Participating Class Member's share will be calculated based on his or her total number of Workweeks compared to other Settlement Class Members' workweeks. Settlement ¶ 3.2.4. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. *See Harris v. Vector Mktg. Corp.*, 2011 WL

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

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1627973, at *9 (N.D. Cal. Apr. 29, 2011) (no preferential treatment where settlement "provides equal relief to all class members" and "distributions to each class member—including Plaintiff—are calculated in the same way").

The relief provided in the Settlement will not result in preferential treatment for the Class Representatives. Each Plaintiff will apply to the Court for a Class Representative Service Payment in a reasonable amount. DS ¶ 57. Plaintiffs participated in the investigation of the class-wide claims, actively assisted Class Counsel in identifying the alleged issues at the heart of litigation, and consulted with Class Counsel regarding the factual allegations and defenses in the case. *Id.* An incentive award is appropriate given each Plaintiff's participation in the Action and general release of all known and unknown claims.[7]

C. The Settlement Falls Within The Range For Approval.

1. The Settlement Is Reasonable In The Experienced Views Of Counsel.

"Because the parties' counsel are the ones most familiar with the facts of the litigation, courts give 'great weight' to their recommendations." *Shannon*, 2020 WL 2394932, at *10 (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)); *see also In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) ("Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation."). "Therefore, the plaintiffs' counsel's recommendations 'should be given a presumption of reasonableness.'" *Shannon*, 2020 WL 2394932, at *10 (quoting *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979)). Class Counsel believe that the Settlement is fair, reasonable, adequate, and in the best interest of the Class Members. DS ¶¶ 52, 77; Declaration

[7] *See, e.g.*, *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (awarding $15,000 to class representative); *Miletak v. Allstate Ins. Co.*, 2012 WL 12921306, at *5 (N.D. Cal. July 12, 2012) (awarding $15,000 to class representative).

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of Walter Haines ("Haines Decl."), ¶ 4; Piazza Decl., ¶¶ 4-9. Class Counsel each have over a decade of legal experience and have been appointed lead counsel in dozens of class actions, including numerous wage and hour class actions. DS ¶¶ 43-50, Haines Decl. ¶¶ 2-4; Piazza Decl., ¶¶ 4-8. Accordingly, the Settlement "should be given a presumption of reasonableness."[8]

2. The Settlement Is Reasonable In Light Of The Expected Recovery.

The Settlement is reasonable in light of Plaintiffs' and the Class Members' expected recovery if they prevailed at trial. In preparing for the mediation and the three settlement conferences with the Court, Plaintiffs' counsel prepared spreadsheets to determine Defendants' maximum exposure with the aid of a payroll data analyst. Plaintiffs' theories of recovery are: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hours Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Unfair Competition; and (8) Civil Penalties (Lab.Code §§ 2698, *et seq.*). DS ¶ 53. Plaintiffs determined Defendants' maximum possible exposure for restitution and penalties to be approximately $146,291,768.00 (consisting of $20,498,459.57 in unpaid wages, $23,595,205.30 in missed meal period premium wages, $24,498,765.01 in missed rest break premium wages, $94,875.00 in unreimbursed expenses, $7,645,300.00 for wage statement penalties, $20,296,363.10 for waiting time penalties, and $49,662,800.00 for civil penalties under PAGA. Plaintiffs calculated the damages based on the number of workweeks and pay periods provided by Defendants, Plaintiffs' reports, and the sample data. *Id.*, Exhibit 6.

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[8] *Saenz v. Lowe's Home Centers, LLC*, 2019 WL 3456810, at *4 (C.D. Cal. July 31, 2019); *Palmer v. Pier 1 Imports, Inc.*, 2018 WL 6133692, at *9 (C.D. Cal. Jan. 9, 2018).

However, based on the difficulties of proof, the Defendants' defenses, and the other attendant risks Plaintiffs identify below, Plaintiffs estimate the likely awards at trial should Plaintiffs prevail to be the following amounts:

a. Unpaid wages and liquidated damages with interest in the amount of $683,008.00;

b. Meal period premium wages with interest in the amount of $2,259,663.00;

c. Rest period premium wages with interest in the amount of $2,449,876.00;

d. Unreimbursed expenses with interest in the amount of $18,975.00;

e. Statutory pay stub penalties in the amount of $0.00;

f. Waiting time penalties in the amount of $0.00; and

g. Civil penalties in the amount of $9,029,600.00.

The total of these amounts is $14,441,122.00. The Gross Settlement Amount of $4,100,000.00 is 28.39% of this amount. DS ¶ 78. A settlement for approximately 28.39% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law. [9] DS ¶ 54.

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

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3. The Settlement Is Reasonable Given The Substantial Risks Of Continued Litigation.

The Settlement is appropriate here due to the substantial risks faced by Plaintiffs concerning class certification. *See Bee, Denning, Inc. v. Capital All. Grp.*, 2016 WL 3952153, at *8 (S.D. Cal. July 21, 2016) (granting preliminary approval based in part on likelihood of continued, expensive litigation and plaintiff's "substantial risk of being unsuccessful at trial").

a. Risks Associated With the Arbitration Agreements

The arbitration agreements entered into between Defendant Express on the one hand, Eve Storm, and the other temp worker Class Members, on the other, present a significant risk to the success of Plaintiffs' class action litigation. DS ¶ 58. According to Defendant Express, the majority of the temp worker Class entered into arbitration agreements with Defendants. *Id.* As the arbitration agreements in question restrict potential litigants from bringing class actions against Defendants, Plaintiffs would be effectively barred from pursuing claims on behalf of the Class in Court. *Id.* As such, by continuing to trial on class-wide claims, Plaintiffs would run the high risk of suffering defeat for many class members due to the existence of the arbitration agreement. Moreover, the arbitration agreements would pose danger to any class certification motion brought by Plaintiffs. Because different defenses would apply to some Class Members and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court could determine that Plaintiffs' claims present too many individualized inquiries to justify class certification. *Id.*

b. Risks Associated with the Unpaid Wages Claim

There is a risk that Plaintiffs' recovery for unpaid wages would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited off-the-clock work. DS ¶ 59. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226

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Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* In its written employment policies, Defendants mandate that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. *Id.* Moreover, while Defendants dispute that off-the-clock work - long waits to park and complete health screening, security procedures, and time clock procedures - occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable (stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contends that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim. *Id.*

The difficulty inherent in proving that off-the-clock work - long waits to park and complete health screening, security procedures, and time clock procedures - occurred poses a significant hurdle to Plaintiffs. Plaintiffs will rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here, Plaintiffs may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a classwide methodology. DS ¶ 60.

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With regard to Plaintiffs' overtime rate underpayment claims, Plaintiffs did not discover that Defendants failed to include all forms of nondiscretionary compensation in the regular rates of pay, and very few employees earned bonuses that would have had anything but a negligible impact on their regular rate of pay. At best, the failure to include bonuses in the regular rate of pay for determining overtime payments and premium pay for missed meal and rest breaks would serve as grounds for waiting time and pay stubs penalties – and only if they were proven to be willful, knowing and intentional. DS ¶ 61.

c. Risks Associated with the Meal Period Claims

There are risks to Plaintiffs' meal period claim. DS ¶ 62. At each of its California distribution centers, Defendant O'Reilly maintained two break rooms, one within the metal detector gates and one outside of it. These break rooms had a television, tables, chairs, vending machines, a refrigerator and a microwave. Employees could visit one of the break rooms at each of the distribution centers without passing through the metal detector gates. Defendant O'Reilly provided evidence that employees chose to use these break rooms for meal periods rather than exiting the facility, though Defendant O'Reilly gave them the option to do so. Further, Defendant O'Reilly had policies that provided for meal periods of up to one hour. The time records of Defendants' hourly distribution center workers show many instances when they took meal periods exceeding 32 minutes without discipline. Therefore, employees could enjoy a duty free 30-minute lunch period even if they spent two (2) minutes passing through security at its beginning and end. Finally, Defendants paid over $110,000.00 in meal period premium wages throughout the Class Period. This evidence suggests that Defendants in good faith paid meal premiums when they learned employees had missed a meal period. Defendants contend that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at

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1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

Defendants contend they did not impede or discourage Plaintiffs, or any other employees, from taking their meal or rest periods. DS ¶ 63. Defendants' policies mandate that employees take at least a 30-minute, uninterrupted meal period and record the beginning and ending time of their meal breaks each day on their time records. *Id.* The time records that comprise the random sample Defendants produced to Plaintiffs for purposes of mediation and settlement conferences show that meal periods were taken the vast majority of the time. *Id.* Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendants or each of the employees concerned. Accordingly, there is a significant risk that the value of Plaintiffs' meal period claim would be substantially reduced at trial. *Id.*

d. Risks Associated with the Rest Break Claims

There are risks to Plaintiffs' rest period claim. DS ¶ 64. As stated above, Defendant O'Reilly provided break rooms to its employees. *Id.* The employees did not need to pass through security to access one of these break rooms at each distribution center. *Id.* There was evidence that employees chose to spend their breaks in these breakrooms because the rest break were short. *Id.* Defendants also had policies allowing for up to 15 minutes for rest breaks. *Id.* Therefore, employees could enjoy a duty free ten minutes even if they spent five (5) minutes passing

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through security at the beginning and end of the break. *Id.* Also, it is unclear from the California Supreme Court decision in *Augustus v. ABM Security Services, Inc*., 2 Cal.5th 257 (2017) whether an employer is obligated to allow its employees to leave the premises for rest breaks. *Id.* Employers are not required to record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt employees the opportunity to take rest periods in accordance with California law. *Id.* Further, Defendants' written policies on meal and rest periods are consistent with the Wage Order. *Id.* Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.* Plaintiffs will depend on sample witness testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *Id.*; *see Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo*, 136 S.Ct. 382 (2015); *Comcast Corporation v. Behrend*, 133 S.Ct. 1426 (2013) .

e. Risks Associated with the Failure to Indemnify Claim

There is a risk that the Court may consider Plaintiffs' claims as to Defendants' alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. DS ¶ 65. Defendants had policies that provided for expense reimbursement. There was also evidence that Defendants made masks and gloves available during the pandemic. Plaintiffs allege that Defendants required Plaintiffs and the Class Members to use their own PPE and

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tools, and failed to indemnify them for these business expenses. *Id.* Defendants presented evidence that they had supplied their employees with tools, equipment, and other supplies and had an expense reimbursement policy. Plaintiffs also discovered that employees did not use their mobile phone for work. As such, there is a risk that the Court may consider Plaintiffs' claims to be individualized in nature and unfit for class wide resolution. *Id.*

f. Risks Associated with the Wage Statement Claims

Plaintiffs also assert claims for wage statement violations, untimely wage violations, and PAGA penalties. Defendants at all times issued itemized wage statements with all categories of information required by Labor Code section 226, though the parties dispute whether the information Defendants stated on this pay stubs is accurate. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. DS ¶ 66. The great challenge here is proving that Defendants knowingly and intentionally withheld accurate and complete information from the pay stubs. Further, the California Supreme Court recently held that an employer is not subject to statutory penalties for providing incomplete or inaccurate wage statements if it reasonably and in good faith believed the statements were accurate:

> In short, the Court of Appeal in this case correctly concluded that when an employer shows that it reasonably and in good faith, albeit mistakenly, believed that it complied with section 226, subdivision (a), that employer's failure to comply with wage statement requirements is not "knowing and intentional," and the employer is therefore not subject to penalties under section 226, subdivision (e)(1).

Naranjo v. Spectrum Sec. Servs., Inc., No. S279397, 2024 WL 1979980, at *18 (Cal. May 6, 2024).

Here, Plaintiffs' wage statement claim has the same underlying risks as the above claims, as it is derivative of them. *Id.* On their face, the wage statements

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issued by Defendants comply with the requirements of Labor Code § 226. *Id.*

g. Risks Associated with the Sick Leave Claims

These claims are particularly risky given the fact that Plaintiffs' pay stubs show sick leave use and accrual. DS ¶ 67.

h. Risks Associated with the Waiting Time Penalty Claims.

This is a derivative claim like the pay stub claim. Without proof of willful behavior, Plaintiffs will be unable to recover these penalties. DS ¶ 68.

i. Risks Associated With the PAGA Claim

Many of the Labor Code sections Plaintiffs allege were violated have the same civil penalty. Of the Labor Code sections that Plaintiffs allege were violated, the following 20 statutes qualify for the default civil penalty of Labor Code section 2699(f)(2): Labor Code sections 90.5(a), 201, 201.3, 202, 203, 218, 218.5, 218.6, 226, 246, 1182.12, 1194, 1194.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404. It is difficult to imagine even the most employee-friendly court stacking a $100 penalty 20 times for the same employee for the same pay period even if violations of all of these statutes were proven.

Under PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiffs' PAGA allegations and there are serious risks to proving Defendants acted intentionally, knowingly, and willfully in violating the rights of Class Members under the Labor Code. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. Moreover, the COVID-19 pandemic - the factual predicate for such of Plaintiffs' off-the-clock claims - could motivate the Court to further reduce the penalty award to avoid what it may consider a confiscatory taking. Thus, the PAGA claims likewise face significant uncertainty.

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DS ¶ 69.

For mediation and settlement conference purposes, Plaintiffs' counsel estimated a maximum possible exposure of approximately $49,662,800.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. DS ¶¶ 69-71, Exhibit 6. Plaintiffs' counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiffs' counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. *Id.* This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. *Id.*; *see also* DS ¶¶ 72-73.

With regard to the Plaintiffs' assertion that Defendants violated the warehouse productivity standards of Labor Code sections 2102 and 2103 (which took effect in 2022), Plaintiffs discovered that Class Members generally had five (5) minutes longer time for breaks that the Wage Order requires and use of restroom facilities. They also discovered that the warehouse workers were not on-call during rest and meal periods. Defendants utilize reports of warehouse scan use by employees as one way of determining the productivity of an employee, though not all of Defendants' employees use scan guns for all or any of their duties. The Defendants' warehouse drivers – a large portion of the class, for example, do not spend most of their time scanning but driving. DS ¶ 74.

With regard to Plaintiffs' claim that toilet and storage facilities, lockers, and change rooms were inadequate and temperatures either too hot or too cold, Defendants produced photographs of their ample toilet facilities and lockers.

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Though the restrooms could be used for changing clothing, there was no need for this as the employees did not wear uniforms and generally came to work wearing their work clothing. Plaintiffs did not discover any records showing historical temperatures in the toilet facilities or locker areas of less than 68 degrees as required by the Wage Order. DS ¶ 75.

j. Risks Associated With A Pick-Up Stix Campaign

An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. DS ¶ 76; *see also Chindarah v. Pick Up Stix, Inc.*, 171 Cal. App. 4th 796 (2009). As discussed above, Defendant may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 5,750 members - until it is no longer numerous enough for class certification. *Id.* Plaintiffs, then, may not have sufficient numbers of employees to represent. This led to a significant reduction of claim value in settlement negotiations. *Id.*

While the evidence gathered through Plaintiffs' discovery supports the merits of the claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation presents significant risks that support a downward departure from Defendants' estimated liability exposure. DS ¶ 77. In view of the risks, the Settlement reflects Plaintiffs' estimate of the total amount of damages, monetary penalties or other relief that the Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.* It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *Id.*; *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (the financial condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1256 (C.D. Cal. 2016) (uncertainty concerning defendant's financial

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stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479, 2014 WL 2465049, * 3 (9th Cir. June 3, 2014).

4. Allocation of the PAGA Payment

The settlement of PAGA penalties in the sum of $410,000.00, of which 75% ($307,500.00) will be paid to the LWDA and 25% ($102,500.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. DS ¶ 79. The Parties negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 528-529 (2018) (affirming trial court's award of only 10% of maximum PAGA penalty for meal break violations). The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. *See, e.g., Chu v. Wells Fargo Investments, LLC*, 2011 WL 67245, 81 (N.D. Cal., Feb. 16, 2011) (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.*, 2013 WL 3541217 (N.D. Cal., July 11, 2013) (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.*, 2008 WL 3385452, at *1 (N.D. Cal. Aug. 8, 2008) (approving PAGA settlement of 0.3% or $1,500); see *Nordstrom Com. Cases*, 186

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Cal.App.4th 576, 589 (2010) (approving PAGA settlement and release that allocated $0 to PAGA claim). Courts have also approved settlements for $20,000 or less. *See*, *e.g.*, *Hicks v. Toys 'R' Us–Delaware, Inc.*, 2014 WL 4703915, at *1 (C.D. Cal. Sept. 2, 2014) (approving $5,000 PAGA payment in a case involving $4 million settlement); *Franco v. Ruiz Food Prods., Inc.*, 2012 WL 5941801 at *14 (E.D. Cal. Nov. 27, 2012) (approving PAGA penalties of $10,000 as part of $2.5 million settlement); *Garcia v. Gordon Trucking*, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (approving PAGA payment of $10,000 as part of $3.7 million common-fund settlement). DS ¶ 79.

VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATES CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON THE POTENTIAL EXTENT OF THEIR INJURY COMPARED TO OTHER CLASS MEMBERS.

The Individual Settlement Payments will be paid to each Class Member based on their eligible Workweeks compared to the total Workweeks. DS ¶ 97; Settlement ¶ 3.2. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. *Id.*

Plaintiffs estimate that there are 289,537 Class Period Workweeks. So, each Workweek has a value of approximately $7.26 ($2,103,333.33 Net Settlement Amount / 289,537 Workweeks = $7.26). The average estimated Individual Class Payment to Class Members will be approximately $365.80. Some Class Members – those who worked more Workweeks during the Class Period - will receive more, and some less. The highest possible Individual Class Payment to a Class Member (i.e., to those who qualify for all Workweeks in the Class Period) will be approximately $1,111.52. The lowest possible Individual Class Payment to a Class Member (i.e., to those who qualify for only one Workweek in the Class Period) will

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be approximately $7.26. *See* DS, ¶¶ 95-96.

It is anticipated that the average Aggrieved Employee's Individual PAGA Payment will be $23.77. Plaintiffs' Individual PAGA Payments, their individual shares of 25% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendants during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiffs estimate that there are 78,609 Aggrieved Employee paychecks/Workweeks for the PAGA Pay Period. So, each Aggrieved Employee paycheck from the PAGA Period has a value of approximately $1.30 (25% of $410,000.00 in PAGA Penalties / 78,609 Aggrieved Employee paychecks = $1.30). The average estimated Individual PAGA Payment to an Aggrieved Employee will be approximately $23.77 ($102,500.00, 25% of PAGA Penalties / 4,312 Aggrieved Employee during the PAGA Period = $23.77 Individual PAGA Payment). Some Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive more, and some less. The highest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately $136.72. The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately $1.30. *See* DS, ¶ 98.

VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS' FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE

The Settlement states Class Counsel may seek attorneys' fees of $1,366,666.67 (one-third of the GSA) and up to $120,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. Settlement ¶ 3.1.

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These amounts are reasonable, given the facts and circumstances of the case. DS ¶¶ 80-83.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 41 (2000). Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.*, 1 Ca1. 5th 480, 503 (2016) (citing *Lealao, supra,* 82 Cal.App.4th at 48-49). The Supreme Court has recently approved fees equal to one-third (1/3) of the common fund. *Laffitte,* 1 Ca1. 5th 480. Many courts have similarly approved fee awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*, 47 F.3d 373, 379 (9th Cir. 1995) (award of 33% of the common fund); *In re Activision*, 723 F.Supp. 1373, 1375 (N.D. Cal. 1989) (32.8% of the common fund); *In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494, 498 (D.D.C. 1981) (45% of settlement fund).

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. DS ¶ 81. Class Counsel interviewed and obtained information from putative class members, met and conferred with Defendants' counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendants and obtained through other sources, researched applicable law, and provided estimates of "damages" for purposes of settlement discussions,

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among other tasks. *Id.*

Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. DS ¶ 82. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.* 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. *Id.*

VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENTS TO PLAINTIFFS SHOULD BE PRELIMINARILY APPROVED BECASUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE.

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g.*, *Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D.Cal. 1995) (approving $50,000 enhancement award). The Settlement provides that Plaintiffs may seek Class Representative Service Payment of $55,000.00 in total. This amount is entirely reasonable given each Plaintiff's efforts in this action and the risks they undertook on behalf of Class Members. DS ¶ 84. Each Plaintiff has devoted many hours advancing the interests of the Settlement Class. Each Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about his/her work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, participating in settlement discussions, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiffs have been exposed to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and

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risks that Plaintiffs undertook on behalf of the Settlement Class show that the proposed Class Representative Service Payments are fair, adequate, and reasonable, and thus warrant preliminary approval. DS ¶¶ 84-94, Exs. 10-15.

IX. THE PROPOSED CLAIMS ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE PRELIMINARILY APPROVED.

With regard to the settlement administration costs ("Administration Expenses Payment") provision, it is reasonable. Before agreeing to Xpand Legal Consulting LLC and its bid of $40,000.00, the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. DS ¶ 120-121, Exs. 16-19. Thus, the settlement administration costs provision should be given preliminary approval.

X. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE AND NOTICE PLAN.

Rule 23(c)(2)(B) requires that, in any case certified under Rule 23(b)(3), the court must direct that class members be given the "best notice that is practicable" under the circumstances. This does not require that each class member receive "actual notice." *Silber v. Mahon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Rather, it suffices if the manner in which notice is disseminated to class members is "reasonably calculated, under all the circumstances, to apprise [them] of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Class Notice by First Class U.S. mail only. Settlement ¶ 8.4.2. Although there are current employee Class Members, it is

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uncertain whether Defendants' records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. DS ¶ 107.

With respect to its content, "[The] notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.*, 48 Cal.App.3d 134, 151-152 (1975). The purpose of the notice in class settlement context is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.* The Class Notice (**Exhibit A** to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the individual Settlement Class Member's estimated payment. Additionally, the Class Notice will include the number of Work Weeks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. If the settlement is preliminarily approved, Class Members will be provided with the Class Notice and an opportunity to object. The Parties' proposed notice will allow Class Members to make informed responses to the proposed settlement. DS ¶¶ 107-119.

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XI. PRESENCE OF GOVERNMENTAL PARTICIPANT

As required under Labor Code section 2699(l)(2), Plaintiffs will provide notice of this settlement to the LWDA with the filing and service of this motion. DS ¶ 122, Ex. 20.

XII. CONCLUSION

For the reasons stated above, this Court should grant Plaintiffs' Motion in its entirety and adopt the proposed order submitted concurrently herewith.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 24, 2024

By: /s/ David Spivak
DAVID G. SPIVAK, Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, and all others similarly situated

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(Additional attorneys for parties on following page)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiffs,

vs.

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company; Express Services, Inc., a Colorado corporation dba Express Employment Professionals; and DOES 2–50, inclusive,

Defendants.

Case No. 3:21-cv-01120-AHG

DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Action filed: June 16, 2021
Hearing Court: 2125, The Honorable Allison H. Goddard

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DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, DAVID SPIVAK, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiffs Jeffrey Pipich ("Pipich"), Eve Storm ("Storm"), Gary Cull ("Cull"), Melissa Kolakowski ("Kolakowski"), and Daniel Lopez ("Lopez") (collectively "Plaintiffs") in their lawsuit against Defendants O'Reilly Auto Enterprises, LLC ("O'Reilly") and Express Services, Inc. ("Express") (collectively "Defendants"). Plaintiffs and Defendants are collectively referred to as the "Parties."

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

3. The Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement" or "Settlement Agreement") is attached hereto as **Exhibit 1.** The Settlement Class consists of all individuals employed by one or both Defendants as non-exempt, hourly employees, either directly or indirectly through staffing agencies, and who worked at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time during the Class Period. Settlement ¶ 1.5. The "Class Period" means the period from July 05, 2018 to the date preliminary approval of the settlement is entered by the court, or May 22, 2024, whichever is earlier. Settlement ¶ 1.5. The "Aggrieved Employees" are all Class Members who were employed by one or both Defendants in California and classified as non-exempt, hourly employees, either directly or indirectly through staffing agencies, and who worked at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time during the PAGA Period. Settlement ¶ 1.4. The "PAGA Period" the period from May 11, 2020 to the date preliminary approval of

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the settlement is entered by the Court, or May 22, 2024, whichever is earlier. Settlement ¶ 1.30. The Settlement is written, signed by all necessary Parties, and attached to this declaration as stated above.

The Release Provisions

4. **Released Persons.** Under the Settlement, "Released Parties" means: Defendants and their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and agents. Settlement ¶ 1.40.

5. **Released Claims.** Under the Settlement, the release to be given by the Class Members (other than the Class representative) is all claims stated in the Operative Complaint and based solely on the facts alleged in the Operative Complaint.

6. **Release Period**. Under the Settlement, the release to be given by the Class Members (other than the Class representative) is limited to liability that arose during the Class Period.

7. **PAGA Release.** Upon entry of Judgment and funding of the Gross Settlement Amount, Plaintiffs, on behalf of themselves and the State of California, and the Aggrieved Employees fully release and discharge Defendants and their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and agents, from any and all claims for relief under the PAGA, based on the claims for penalties that could have been sought by the Labor Commissioner or Plaintiffs based on the facts and legal claims as alleged in the Operative Complaint at the time of final approval by Plaintiffs in the Action and Plaintiffs' notice letters to the LWDA including, but not limited to, Labor Code sections 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under the PAGA, which occurred during the PAGA Period. Plaintiffs do not release the claim for wages or damages

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of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. Settlement ¶ 6.3.

No Reversion

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

Taxes

9. The Settlement provides that Defendants will separately pay the employer's share of any applicable payroll taxes. 10.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 90.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Settlement ¶ 3.2.4.1. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Settlement ¶ 3.2.5.2.

Factual and Procedural Background

10. **Plaintiffs' Employment with Defendants.** O'Reilly is an auto parts distributor and Express is a temporary employment agency. Defendant O'Reilly employed Pipich in California as a driver and warehouse worker from about July 1, 2015 until February 1, 2021. Defendants employed Storm in California as a warehouse worker from about November 30, 2020 until January 7, 2021. Defendant O'Reilly employed Cull in California as a warehouse worker from about December 4, 2018 until September 29, 2019. Defendant O'Reilly employed Kolakowski in California as a warehouse worker from about October 29, 2019 until January 27, 2022. Defendant O'Reilly employed Lopez in California as a warehouse worker from about June of 2017 until October 2, 2023.

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11. **LWDA Notices and Lawsuits.** On May 11, 2021, Jeffrey Pipich ("Pipich") electronically submitted written notice to the LWDA of O'Reilly's violations of Labor Code §§ 510, 512, 558, 1174, 1182.11, 1194, and 1197. Settlement ¶ 2.1.

12. On June 16, 2021, Pipich filed his FLSA collective action Complaint in the United States District Court for the Southern District of California. It was assigned to the Honorable Judge M. James Lorenz. Pipich's FLSA claims in the First Amended Complaint were dismissed on March 14, 2022. Settlement ¶ 2.2.

13. On July 22, 2021, Pipich filed his First Amended Complaint asserting, among other things, PAGA claims on behalf of himself and similarly aggrieved employees for Defendant O'Reilly's Labor Code violations for unpaid wages for time spent in Covid-19 and security screenings, meal and rest break violations, failure to reimburse for business expenses, inaccurate wage statements, untimely wages, and related violations. Settlement ¶ 2.3.

14. By letter dated August 11, 2021, Storm gave written notice by certified mail to the LWDA of violations of the California Labor Code. Storm filed her PAGA representative action in the Riverside County Superior Court on October 15, 2021, case no. CVRI2202748. The bases for Storm's private attorney general action are Defendants' failure to pay all wages earned at the correct rates, including for time spent in security checks, failure to provide meal breaks, failure to authorize and permit rest breaks, failure to reimburse for expenses, failure to provide accurate and complete itemized wage statements, untimely wages during and at the conclusion of employment, failure to provide toilet and storage facilities, lockers, and acceptable work temperatures, and failure to maintain accurate employment records. *Id.* ¶ 2.4. This lawsuit remains pending.

15. On January 4, 2022, Pipich submitted an Amended PAGA Notice to the LWDA for violations of Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 and Wage Order 9. *Id.* ¶ 2.5.

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16. On April 7, 2022, Pipich filed a Second Amended Complaint asserting only representative PAGA claims to recover civil penalties for violations of the Labor Code, including sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2350, and 2802. *Id.* ¶ 2.6.

17. On November 22, 2021, Storm filed an Amendment to Complaint to add O'Reilly in place of Doe Defendant 1. *Id.* ¶ 2.7.

18. On January 5, 2022, Storm sent a supplemental written notice by certified mail to the LWDA. On January 27, 2022, the Parties agreed to stay the Storm PAGA case pending the resolution of the first filed Pipich PAGA case. *Id.* ¶ 2.8.

19. On June 15, 2022, Pipich and O'Reilly participated in an early neutral evaluation conference in the United States District Court for the Southern District of California. The Parties engaged in settlement negotiations at that time. The disputes between the Parties did not resolve at that time. *Id.* ¶ 2.9.

20. On July 5, 2022, Storm filed a class action lawsuit against Defendants, *Eve Storm v. Express Services, Inc. dba Express Employment Professionals, at al.*, Superior Court for the State of California, County of Riverside, Case No. CVR12202748. Storm's Class Action Complaint presented the following causes of action: Failure to pay all wages earned at the correct rates; Failure to provide meal periods; Failure to authorize and permit rest breaks; Failure to reimburse for expenses; Waiting time penalties; and Unfair competition. *Id.* ¶ 2.10.

21. On August 26, 2022, Defendant O'Reilly removed Storm's class action lawsuit to the United States District Court for the Central District of California, case no. 5:22-cv-01510 FLA (MARx). The parties in the Storm Action entered into a tolling agreement and dismissed the class action pending the results of a mediation. *Id.* ¶ 2.11.

22. On February 14, 2023, Pipich and Storm participated in mediation with Defendants and mediator Ann Kotlarski, Esq. The disputes between all the Parties

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did not resolve at that time. *Id.* ¶ 2.12.

23. On April 5, 2023, Storm filed another class action lawsuit against Defendants, titled *Eve Storm v. Express Services, Inc. dba Express Employment Professionals, at al.*, United States District Court, Central District of California, Case No. 5:23-CV-00597-FLA-MAR. Storm's Class Action Complaint presented the following causes of action: Failure to pay all wages earned at the correct rates; Failure to provide meal periods; Failure to authorize and permit rest breaks; Failure to reimburse for expenses; Waiting time penalties; and Unfair competition. Defendants subsequently filed a motion to compel arbitration of this case. *Id.* ¶ 2.13.

24. On April 14, 2023, Pipich filed a Third Amended Complaint for Defendant O'Reilly's alleged failure to: (1) Provide all rest and meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned for all hours worked at the correct rates of pay; (4) Issue accurate and complete itemized wage statements; (5) Timely pay wages during and upon termination of employment and; (6) Provide toilet and storage facilities, lockers, change rooms, and acceptable work temperatures, and (7) Maintain accurate employment records. *Id.* ¶ 2.14.

25. On June 12, 2023, Cull filed a class action complaint in the Superior Court of the State of California, County of Riverside, case no. CVRI2303008. It contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hour Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; and (5) Unfair Competition. On August 14, 2023, Defendant O'Reilly removed the Cull lawsuit to the United States District Court for the Central District of California, case no. 5:23-cv-01623-FLA-MAR. *Id.* ¶ 2.15.

26. On December 26, 2023, Cull filed a First Amended Class Action Complaint adding Melissa Kolakowski and Daniel Lopez as named plaintiffs. It contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To

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Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hours Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; (5) Waiting Time Penalties; and (5) Unfair Competition. *Id.* ¶ 2.16.

27. On February 5 and 21, 2024, the Parties participated in mandatory settlement conferences before Honorable Magistrate Judge Jill L. Burkhardt which led to this Agreement to settle the Action. Settlement ¶ 2.17.

28. On May 2, 2024, the United States District Court for the Central District of California dismissed the Storm and Cull matters without prejudice. Attached collectively as **Exhibit 2** are true and correct copies of the United States District Court for the Central District of California orders dismissing the Storm and Cull matters without prejudice.

29. On May 16, 2024, pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave additional written notice to Defendants and the LWDA of Defendants' violations of the Labor Code. A true and correct copy of this notice is attached to this declaration as **Exhibit 3**.

30. On May 21, 2024, Pipich filed a Fourth Amended Complaint that added Storm, Cull, Kolakowski, and Lopez as additional Plaintiffs and Express Services, Inc. in place of Doe Defendant 1. It contains the claims made in the prior actions of the Plaintiffs recounted above and additional factual allegations investigated and discovered by the Plaintiffs which were part of the settlement negotiations at the mediation and mandatory settlement conferences. The Fourth Amended Complaint is the "Operative Complaint." A true and correct copy of Fourth Amended Complaint is attached to this declaration as **Exhibit 4.** The Fourth Amended Complaint contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hours Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Unfair Competition; and Civil Penalties (Lab.Code §§ 2698, *et seq.*).

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31. **Investigation.** On September 12, 2022, Plaintiffs requested that Defendants informally disclose documents and data to enable Plaintiffs to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations periods applicable to Plaintiffs' claims. Plaintiffs also requested a reasonable, randomly selected sample of Defendants' time, payroll, and expense records, and related personnel records. Finally, Plaintiffs requested Defendants' written policies applicable to the claims at hand and asked Defendants identify any and all similar claims against them.

32. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendants produced Plaintiffs' entire personnel files (including policies and agreements they signed and acknowledged) and copies of their relevant company written policies.

33. **Sampling.** Before the mediation, Defendant O'Reilly represented that it had directly employed 2,889 putative class members directly during the period of May 11, 2020 to November 15, 2022 and approximately 3,587 putative class members during the period of July 5, 2018 to November 15, 2022. Plaintiffs estimated approximately a total of 4,656 putative class members during the period of May 11, 2020 to November 15, 2022 and 5,854 putative class members during the period of July 5, 2018 to November 15, 2022 who were employed both directly and indirectly through staffing agencies. Plaintiff's data analyst, James Toney, evaluated these sample records to determine shift, workday, and workweek lengths, meal period timing, paychecks issued, overtime hours, and hourly rates of pay (among other things). Subsequently, Plaintiffs gathered the personnel files of dozens of employees from Defendants and Defendants produced additional data up and through the final settlement conferences with Magistrate Judge Burkhardt that included the class size (both direct hires and temp workers), the aggrieved

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employees under PAGA, the number of pay checks, the number of workweeks, and additional data points through November of 2023.

34. **Plaintiffs' Data Analyst.** Plaintiffs retained James Toney, a data analyst, to analyze the sample. Plaintiffs also employed the Raosoft[10] Sample Size calculator (http://www.raosoft.com/samplesize.html) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715 (2004); *Duran v. U.S. Bank*, 59 Cal.4th 1 (2014). 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 32%, a confidence level of 95%, and a population size of 5,750, the Raosoft Sample Size Calculator recommended a sample of 10. 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 Plaintiffs' data analyst evaluated is statistically reliable.

35. **Mediation and Settlement Conferences.** Following much of the foregoing informal discovery and exchange of information, the Parties engaged in settlement discussions. On June 15, 2022, Pipich and O'Reilly participated in an early neutral evaluation conference in the United States District Court for the Southern District of California, the Honorable Magistrate Judge Jill L. Burkhardt presiding. The Parties engaged in settlement negotiations at that time. The disputes between the Parties did not resolve at that time. Settlement ¶ 2.9. On February 14,

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

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2023, Pipich and Storm participated in mediation with Defendants and mediator Ann Kotlarski, Esq. The disputes between all the Parties did not resolve at that time. *Id.* ¶ 2.12. On February 5 and 21, 2024, the Parties participated in mandatory settlement conferences with the Honorable Magistrate Judge Jill L. Burkhardt which led to this Agreement to settle the Action. Settlement ¶ 2.17. During these settlement proceedings, the Parties participated in multiple days of productive negotiations and ultimately reached agreement on a class-wide settlement. During the proceedings, each side, represented by his/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

36. **Relevant Litigation and Claims.** I have made a reasonable inquiry of the other members of my law firm and my co-counsel to determine whether they are aware of any such similar actions. Defendants disclosed that there have been similar claims against them. Defendants disclosed and/or Plaintiffs discovered the following similar claims for unpaid minimum wages, overtime wages, meal, rest period violations, off-the-clock COVID-19 and security screenings:

(A) *Stephanie Perez v. O'Reilly Auto Enterprises, LLC,* Superior Court of the State of California for County of San Joaquin, case no. STK-CV-UOE-2023-7289, filed on July 14, 2023, and amended on September 23, 2023. This is a class and PAGA action for (1) Failure To Provide Duty-Free Meal Periods; (2) Failure To Provide Duty-Free Rest Periods; (3) Failure To Pay Minimum Wages; (4) Failure To Pay Overtime Wages; (5) Unfair, Competition; (6) Failure To Provide Accurate Wage Statements; (7) Failure To Pay All Wages Owed Upon Termination; and (8) Civil Penalties Under PAGA; and

(B) *Sally Fonseca v. O'Reilly Auto Enterprises, LLC*, Superior Court of the State of California for County of San Joaquin, case no. STK-CV-UOE-

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2024-354, filed on January 11, 2024. This is a class and PAGA action for (1) Failure To Pay Minimum Wages; (2) Failure To Pay Overtime Wages; (3) Meal Period Liability; (4) Rest Break Liability; (5) Failure To Provide Accurate Itemized Employee Wage Statements; (6) Violation Of Labor Code Section 1174; (7) Violation Of Labor Code Sections 2102 And 2103; (8) Failure To Pay Wages Timely And Upon Separation Of Employment; And (9) Violation Of Unfair Competition Law.

It is my understanding that the aforementioned matters settled on an individual basis.

Uncashed Checks

37. The recipient, San Diego County Bar Foundation, is a nonprofit organization, foundation, or program of the type described in that subdivision.

Ascertainable and Numerous Class

38. **Ascertainability**. A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, Plaintiffs maintain that the Settlement Class is ascertainable because its members may be identified by reference to Defendants' records and Defendants have agreed to share the relevant information from their records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

39. **Numerosity**. The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California Supreme Court has upheld a class of as few as 10 individuals. O'Reilly estimates that there are approximately 5,750 Class Members for the Class Period of July 05, 2018 to November 30, 2023. Plaintiffs maintain that it would be impractical and economically inefficient to require each Settlement Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Settlement Class's membership is sufficiently numerous. Additionally, O'Reilly estimates that

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there are 4,916 Aggrieved Employees for the PAGA Period of May 11, 2020 to November 30, 2023.

Predominant Common Questions

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

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Typicality

41. Plaintiffs contend that their claims are typical for the purposes of certifying the Settlement Class. Plaintiffs assert that they, like absent Class Members, were subject to the same relevant policies and procedures governing their compensation, hours of work and meal and rest periods. Because Plaintiffs contend that they were subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiffs will determine Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiffs' claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiffs' claims are typical of the Class.

Adequacy

42. Neither Plaintiffs nor I have any conflicts of interest with the absent Settlement Class Members. Plaintiffs contends that they are adequate class representatives. Plaintiffs and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendants during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiffs and the Class Members. Moreover, Plaintiffs have demonstrated their commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing themselves to the risk of attorneys' fees and costs awards against them if this lawsuit had been unsuccessful. Thus, Plaintiffs are adequate to serve as settlement class representatives.

Background of Class Counsel

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

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

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

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

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

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

b. *Jorge Guzman v. Department of Justice*, United States District Court, Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation and police brutality by agents of the Office of the

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Inspector General. Jury found the Defendants liable. Case settled shortly before the damages phase. See "U.S. to Pay $400,000 to INS Agent in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21, 1999.

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

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

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

f. *Richard Wamel v. Ocelot Engineering Co*., Judicate West before the Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and wrongful termination against his former employer. The

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Neutral Arbitrator awarded compensatory and liquidated damages. The claims for damages, attorney's fees and costs were resolved shortly thereafter by means of a confidential settlement.

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

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

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

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

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

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

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

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

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

Evans v. Equinox, et al., Los Angeles Sup.Ct., Case No. BC440058 (appointed Class Counsel and granted final approval by the court of class action settlement on behalf of personal trainer employees).

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

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

La Fleur v. Medical Management International, Inc., United States District Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel and granted final approval of class action settlement on

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behalf of practice managers).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Class Action Treatment Is Superior

51. 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

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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

52. The class settlement here satisfies all settlement criteria of Rule 23 of the Federal Rules of Civil Procedure. The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator and a Magistrate Judge after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendants' estimated exposure. Both defense counsel and I are particularly experienced in employment law and wage and hour class actions. We are experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and hour class settlements, including many involving the same issues presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable settlement in light of the complexities of the case and uncertainties of class certification and litigation, and a fair result for the Class Members.

Exposure & Risk Analysis

53. Plaintiffs' theories of recovery are: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hours Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Unfair Competition; and (8) Civil Penalties (Lab.Code §§ 2698, *et seq.*). Plaintiffs prepared "damages"

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estimates in advance of the mediation and the settlement conferences. Plaintiffs determined Defendants' maximum possible exposure for restitution and penalties to be approximately $146,291,768.00 (consisting of $20,498,459.57 in unpaid wages, $23,595,205.30 in missed meal period premium wages, $24,498,765.01 in missed rest break premium wages, $94,875.00 in unreimbursed expenses, $7,645,300.00 for wage statement penalties, $20,296,363.10 for waiting time penalties, and $49,662,800.00 for civil penalties under PAGA. True and correct copies of the spreadsheets my office prepared are attached to this declaration as **Exhibit 6**.

54. The estimates are in essence "home run" projections that omit data points that will undoubtedly reduce the maximum possible damages award and do not factor in any of the risks involved in litigating this Action. Plaintiffs calculated the damages based on the number of workweeks and pay periods provided by Defendants, Plaintiffs' reports, and the sample data. A settlement for approximately 28.39% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.[11]

55. My initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, I believe a class settlement for $4,100,000.00 is fair and reasonable.

56. Plaintiffs' counsel do not stand to receive a disproportionate

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

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distribution of the settlement, there is no clear sailing provision on attorneys' fees, and there is no reversion of unawarded funds to Defendants.

57. The relief provided in the Settlement will not result in preferential treatment for the Class Representatives. Each Plaintiff will apply to the Court for a Class Representative Service Payment in a reasonable amount. Plaintiffs participated in the investigation of the class-wide claims, actively assisted Class Counsel in identifying the alleged issues at the heart of litigation, and consulted with Class Counsel regarding the factual allegations and defenses in the case.

58. **Risks Associated with the Arbitration Agreements.** The arbitration agreements entered into between Defendant Express on the one hand, and the temp worker Class Members, on the other, present a significant risk to the success of Plaintiffs' class action litigation. According to Defendant Express, the majority of the temp worker Class entered into arbitration agreements. As the arbitration agreements in question restrict potential litigants from bringing class actions against Defendants, Plaintiffs would be effectively barred from pursuing claims on behalf of the Class in Court. As such, by continuing to trial on class-wide claims, Plaintiffs would run the high risk of suffering defeat due to the existence of the arbitration agreement. Moreover, the arbitration agreements would pose danger to any class certification motion brought by Plaintiffs. Because different defenses would apply to some Class Members and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court could determine that Plaintiffs' claims present too many individualized inquiries to justify class certification.

59. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiffs' recovery for unpaid wages would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital*, 226 Cal.App.4th 391 (2014) (employer must have notice of

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off-the-clock work for it to be compensable). In their written employment policies, Defendants mandate that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. Moreover, while Defendants dispute that off-the-clock work - long waits to park and complete health screening, security procedures, and time clock procedures - occurred, they contend that any time spent off the clock in security checks was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.*, 5 Cal. 5th 829, 835 (2018) suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable (stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim.

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

61. With regard to Plaintiffs' overtime rate underpayment claims, Plaintiffs did not discover that Defendants failed to include all forms of

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nondiscretionary compensation in the regular rates of pay, and very few employees earned bonuses that would have had anything but a negligible impact on their regular rate of pay. At best, the failure to include bonuses in the regular rate of pay for determining overtime payments and premium pay for missed meal and rest breaks would serve as grounds for waiting time and pay stubs penalties – and only if they were proven to be willful, knowing and intentional.

62. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiffs' meal period claim. At each of its California distribution centers, Defendant O'Reilly maintained two break rooms, one within the metal detector gates and one outside of it. These break rooms had a television, tables, chairs, vending machines, a refrigerator and a microwave. Employees could visit one of the break rooms at each distribution centers without passing through the metal detector gates. Defendant O'Reilly provided evidence that employees chose to use these break rooms for meal periods rather than exiting the facility, though Defendant O'Reilly gave them the option to do so. Further, Defendant O'Reilly had policies that provided for meal periods of up to one hour. The time records of Defendants' hourly distribution center workers show many instances when they took meal periods exceeding 32 minutes without discipline. Therefore, employees could enjoy a duty free 30-minute lunch period even if they spent two (2) minutes passing through security at its beginning and end. Finally, Defendants paid over $110,000.00 in meal period premium wages throughout the Class Period. This evidence suggests that Defendants in good faith paid meal premiums when they learned employees had missed a meal period. Defendants contend that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged,

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or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack*, 271 F.R.D. 629, 641 (N.D. Cal. 2010).

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

64. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiffs' rest period claim. As stated above, Defendant O'Reilly provided break rooms to its employees. The employees did not need to pass through security to access one of these break rooms at each distribution center. There was evidence that employees chose to spend their breaks in these breakrooms because the rest break were short. Defendant O'Reilly also had policies allowing for up to 15 minutes for rest breaks. Therefore, employees could enjoy a duty free ten minutes even if they spent five (5) minutes passing through security at the beginning and end of the break. Also, it is unclear from the California Supreme Court decision in *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2017) whether an employer is obligated to allow its employees to leave the premises for rest breaks. Employers are not required to record rest periods and such periods are paid. Defendants contend they provided non-exempt employees the opportunity to take rest periods

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in accordance with California law. Further, Defendants' written policies on meal and rest periods are consistent with the Wage Order. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing such claims at trial has become exceedingly difficult. Plaintiffs will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *See Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1, 31 (2014) (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo*, 136 S.Ct. 382 (2015); *Comcast Corporation v. Behrend*, 133 S.Ct. 1426 (2013).

65. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the Court may consider Plaintiffs' claims as to Defendants' alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. Defendants had policies that provided for expense reimbursement. There was also evidence that Defendants made masks and gloves available during the pandemic. Plaintiffs allege that Defendants required Plaintiffs and the Class Members to use their own PPE and tools, and failed to indemnify them for these business expenses. Plaintiffs also discovered that employees did not use their mobile phone for work. As such, there is a risk that the Court may consider Plaintiffs' claims to be individualized in nature and unfit for class wide resolution.

66. **Risks Associated with the Wage Statement Penalty Claims**. Plaintiffs also assert claims for wage statement violations, untimely wage violations, and PAGA penalties. Defendants at all times issued itemized wage statements with all categories of information required by Labor Code section 226, though the parties dispute whether the information Defendants stated on this pay

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stubs is accurate. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiffs' wage statement claim has the same underlying risks as the above claims, as it is derivative of them. On their face, the wage statements issued by Defendants comply with the requirements of Labor Code section 226. The great difficulty here will be in proving that Defendants knowingly and intentionally misinformed Class Members with their wage statements. This will be a significant challenge for Plaintiffs.

67. **Risks Associated with the Sick Leave Claims.** These claims are particularly risky given the fact that Plaintiffs' pay stubs show sick leave use and accrual.

68. **Risks Associated with the Waiting Time Penalties Claims**. Without proof of willful behavior, Plaintiffs will be unable to recover these penalties. Defendants timely paid wages. The Parties only dispute whether Defendants paid all wages earned in a timely matter. This will be a significant challenge for Plaintiffs.

69. **Risks Associated With the PAGA Claim.** As the Operative Complaint makes clear, Plaintiffs predicate their PAGA claim on the same Labor Code violations as their other claims. Plaintiffs' "damages" spreadsheets, **Exhibit 6**, state the length of the relevant time period for the PAGA claim and the number of employees allegedly employed during that time period. Plaintiffs' "damages" spreadsheets, **Exhibit 6,** also state the total amount of civil penalties for which the Defendants are potentially liable if all allegations are proven. As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiffs' PAGA allegations and there are serious risks to proving Defendants acted intentionally, knowingly, and willfully in violating the rights of Class Members under the Labor Code. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. Moreover, the COVID-19 pandemic, the

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factual predicate for such of Plaintiffs' off-the-clock claims, could motivate the Court to further reduce the penalty award to avoid what it may consider a confiscatory taking. Thus, the PAGA claims likewise face significant uncertainty. Plaintiffs calculated the agreed-upon amount of civil penalties by considering the risks outlined above and that the Settlement already provides substantial payments for the Labor Code violations that the civil penalties claim is predicated on.

70. Many of the Labor Code sections Plaintiffs allege were violated have the same civil penalty. Of the Labor Code sections that Plaintiffs allege were violated, the following 20 statutes qualify for the default civil penalty of Labor Code section 2699(f)(2): Labor Code sections 90.5(a), 201, 201.3, 202, 203, 218, 218.5, 218.6, 226, 246, 1182.12, 1194, 1194.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404. It is difficult to imagine even the most employee-friendly court stacking a $100 penalty 20 times for the same employee for the same pay period even if violations of all of these statutes were proven. Regarding PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiffs' PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory.

71. This uncertainty increases Plaintiffs' risk of pursuing the PAGA claims and required a significant discount for settlement purposes. For mediation purposes, I estimated a maximum possible exposure of approximately $49,662,800.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. Plaintiffs' counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative

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violations. Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiffs' counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking.

72. I am aware of a few significant awards under the PAGA in a contested proceeding. PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.[12]

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

74. With regard to the Plaintiffs' assertion that Defendants violated the warehouse productivity standards of Labor Code sections 2102 and 2103 (which took effect in 2022), Plaintiffs discovered that Class Members generally had five (5) minutes longer time for breaks that the Wage Order requires and use of restroom

[12] In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 7**. The plaintiff sought in excess of $9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately $325,000 in civil penalties under the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 8**, 19:8-20:19.

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facilities. They also discovered that the warehouse workers were not on-call during rest and meal periods. Defendants utilize reports of warehouse scan use by employees as one way of determining the productivity of an employee, though not all of Defendants' employees use scan guns for all or any of their duties. The Defendants' warehouse drivers – a large portion of the class, for example, do not spend most of their time scanning but driving.

75. With regard to Plaintiffs' claim that toilet and storage facilities, lockers, change rooms were inadequate and temperatures either too hot or too cold, Defendants produced photographs of their ample toilet facilities and lockers. Though the restrooms could be used for changing clothing, there was no need for this as the employees did not wear uniforms and generally came to work wearing their work clothing. Plaintiffs did not discover any records showing historical temperatures in the toilet facilities or locker areas of less than 68 degrees as required by the Wage Order.

76. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. *See Chindarah v. Pick Up Stix, Inc.*, 171 Cal. App. 4th 796 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 5,750 members - until it is no longer numerous enough for class certification. Plaintiffs, then, may not have a sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

77. While the evidence gathered through Plaintiffs' discovery supports the merits of the claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation presents significant risks that support a downward departure from Defendants' estimated liability exposure. In view of the risks, the

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

78. Above, Plaintiffs list the maximum amounts recoverable in this action. However, based on the difficulties of proof, the Defendants' defenses, and the other attendant risks I identify above, I estimate the *likely* awards at trial should Plaintiffs prevail to be the following amounts:

a. Unpaid wages and liquidated damages with interest in the amount of $683,008.00;

b. Meal period premium wages with interest in the amount of $2,259,663.00;

c. Rest period premium wages with interest in the amount of $2,449,876.00;

d. Unreimbursed expenses with interest in the amount of $18,975.00;

e. Statutory pay stub penalties in the amount of $0.00;

f. Waiting time penalties in the amount of $0.00; and

g. Civil penalties in the amount of $9,029,600.00.

True and correct copies of the revised spreadsheets I prepared are attached to this declaration as **Exhibit 21**.The total of these amounts is $14,441,122.00. The Gross Settlement Amount of $4,100,000.00 is 28.39% of this amount.

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Allocation of the PAGA Payment

79. The settlement of PAGA penalties in the sum of $410,000.00, of which 75% ($307,500.00) will be paid to the LWDA and 25% ($102,500.00) will be distributed to the Class Members, is reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the Class Members. The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members.

Attorneys' Fees and Costs

80. Class Counsel intend to request Class Counsel Attorneys' Fees of $1,366,666.67 (one-third of the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which Class Counsel currently estimate to be approximately $46,000.14 and will be no more than $120,000.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc*., San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc*., San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc*., Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc*., San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al*., Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-

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

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third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

81. 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 Defendants' counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendants and obtained through other sources, researched applicable law, and estimates of "damages" for purposes of settlement discussions, among other tasks.

82. 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.

83. True and correct copies of the fee division agreements between Plaintiffs' counsel are attached collectively as **Exhibit 9**.

Class Representative Service Payments

84. The Settlement provides that Plaintiffs may seek Class Representative Service Payments totaling $55,000.00. This amount is entirely reasonable given each Plaintiff's efforts in this Action and the risks s/he undertook on behalf of Class Members. Here, each Plaintiff has devoted many hours advancing the interests of the Settlement Class. Each Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about his/her work history

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with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiffs have been exposed to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiffs undertook on behalf of the Settlement Class show that the proposed Class Representative Service Payments are fair, adequate, and reasonable, and thus warrant preliminary approval.

85. Plaintiffs began their investigation and retention of attorneys to pursue the claims at issue on approximately April of 2021. Awarding Plaintiffs 1.46% of the GSA is entirely reasonable given each Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In this case, each Plaintiff has devoted several hours of his/her time advancing the interests of the Class Members and also expects to devote additional hours of his/her time with Class Counsel overseeing the administration of the Settlement if the Court grants final approval of the Settlement. Plaintiffs have done this by, among other things, retaining experienced counsel, providing them with extensive information about their work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, assisting them in contacting absent Class Members to gather information, participating in settlement negotiations, foregoing pursuit of their individual claims in favor of a fair class-wide resolution, and being actively involved in the settlement process to ensure a fair result for the Class Members as a whole.

86. As a Class Representative, each Plaintiff agreed to (1) consider the interests of the class just as s/he would consider his/her own interests and, in some cases, to put the interests of the class before his/her own interests; (2) actively participate in the lawsuit, as necessary, by among other things, answering

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

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

a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist. March 1, 2013) (court awarded the employer $2,210,360 in attorney's fees to be paid by employee for employee's unsuccessful suit for unpaid

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bonuses). A true and correct copy of the court's order is attached to this declaration as **Exhibit 10**.

b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov. 30, 2011) (court ordered the employee to pay $36,612.50 in attorney's fees and costs to employer for unsuccessful suit for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 11**.

c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb. 18, 2003) (court ordered the employee to pay $20,269 in attorney's fees and costs to the employer for unsuccessful suit for unpaid wages and overtime). A true and correct copy of the court's order is attached to this declaration as **Exhibit 12**.

d. *Villalobos v. Guertin*, No. CIV. S–07–2778 LKK/GGH, 2009 WL 4718721 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay $21,180 in attorney's fees and $1,525.80 in costs to defense counsel for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 13**.

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

88. As I explain further below, Plaintiffs' individual shares of the Net Settlement Amount will be less than that of some absent Class Members. Under the Settlement, Class Members will receive a *pro rata* distribution of the Settlement proceeds proportionate to the period of time he or she worked for Defendants during

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the Class Period, compared to the total of the total period of time worked by all Class Members during the Class Period, as reflected by Defendants' records. Because Plaintiffs may have been employed for a shorter period during the Class Period, some Class Members will have worked more Work Weeks than Plaintiffs 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 Plaintiffs assumed when they brought the lawsuit, it is unfair to limit Plaintiffs' Class Representative Service Payments to an amount not much greater than an absent Class Members' share of the recovery. To encourage employees like Plaintiffs to don the helm of class champions (and thereby advance the important public policies behind class actions), the Court should award something substantial to Plaintiffs for their readiness to receive less than absent Class Members while assuming all the risk and delay of payment.

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

90. If would-be class action plaintiffs are not adequately incentivized to advance the public policy behind class actions in court in light of the time and risk it will entail, it is unlikely that they will bring class action lawsuits in the first place.

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Once employers realize that such lawsuits are unlikely, they will have no incentive to comply with wage and hour laws.

91. Each Plaintiff faced the risk that s/he could face worsened career prospects for suing a former employer for wage and hour violations and serving as a Plaintiff in a class action lawsuit. Because Plaintiffs filed a lawsuit in the California Superior Court and United States District Courts, a public record now exists that Plaintiffs sued their employer for Labor Code violations – a fact that won't be lost on prospective employers considering Plaintiffs for a job. Common sense dictates that an employer will think twice about hiring someone who sued his last employer. Legal experts have recognized this fact. Attached to this declaration as **Exhibit 14** is a true and correct copy of the article "Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)." Attached to this declaration as **Exhibit 15** is a true and correct copy of the article "What To Expect If You Sue Your Employer." California even has laws to address this risk: Labor Code § 1102.5 prohibits retaliation against employees who speak up about Labor Code violations and Labor Code § 98.6 prohibits discrimination against employees who bring Labor Code violations to the attention of the Labor Commissioner. Thus, the risk to each Plaintiff's future employment shows that the Class Representative Service Payments sought are fair, adequate, and reasonable, and warrants final approval of the Court.

92. Class Counsel depended on Plaintiffs' input to prosecute this lawsuit. Plaintiffs made this case possible for a number of reasons. First, Plaintiffs challenged their employers on an unlawful practice that led to Defendants paying a large percentage of the unpaid wages in question plus interest to the remainder of its employees – in spite of Defendants' financial limitations. Plaintiffs provided Class Counsel with detailed descriptions of how Defendants' business operates, the hours and scheduling of employees, and the nature of the work Class Members performed.

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

94. In view of the risks, Plaintiffs achieved a result the Class can be proud of. There were significant risks (outlined in the preliminary approval motion) to any award on behalf of the Class Members and still Plaintiffs achieved a settlement of $4,100,000.00. This outstanding result calls for significant awards to Plaintiffs for making the result possible.

Class Member and Aggrieved Employee Settlement Share Estimates

95. **Individual Class Payments.** Plaintiffs estimate that there are 289,537 Class Period Workweeks. So, each Workweek has a value of approximately $7.26 ($2,103,333.33 Net Settlement Amount / 289,537 Workweeks = $7.26). The average estimated Individual Class Payment to Class Members will be approximately $365.80. Some Class Members – those who worked more Workweeks during the Class Period - will receive more, and some less. The highest possible Individual Class Payment to a Class Member (i.e., to those who qualify for all Workweeks in the Class Period) will be approximately $1,111.52. The lowest possible Individual Class Payment to a Class Member (i.e., to those who qualify for only one Workweek in the Class Period) will be approximately $7.26. Some Class Members – those who worked more Workweeks during the Class Period - will receive more, and some less.

96. At $19.07 per hour (the average Class Member's hourly wage), the average estimated Individual Class Payment to Class Members is the equivalent of over 19 hours of unpaid wages (the primary remedies sought) ($365.80 average Individual Class Payment / $19.07 per hour = 19.18 hours). Assuming time spent

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undergoing health screening and security procedures each day is about two minutes, the average Individual Class Payment compensates for 571 days with time spent in health screening and security procedures without pay ($365.80 average Individual Class Payment / [$19.07 per hour / 0.03333 hours = $0.64 per day] = 571 days). Thus, this is a result the Class can be proud of in view of the significant risks.

97. The Individual Class Payment will be paid to each Class Member based on his or her eligible Workweeks compared to the total Workweeks. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. Settlement ¶ 3.2.

98. **Individual PAGA Payments.** It is anticipated that the average Aggrieved Employee's Individual PAGA Payment will be $23.77. Plaintiffs' Individual PAGA Payments, their individual shares of 25% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendants during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiffs estimate that there are 78,609 Aggrieved Employee paychecks/Workweeks for the PAGA Pay Period. So, each Aggrieved Employee paycheck from the PAGA Period has a value of approximately $1.30 (25% of $410,000.00 in PAGA Penalties / 78,609 Aggrieved Employee paychecks = $1.30). The average estimated Individual PAGA Payment to an Aggrieved Employee will be approximately $23.77 ($102,500.00, 25% of PAGA Penalties / 4,312 Aggrieved Employee during the PAGA Period = $23.77 Individual PAGA Payment). Some Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive more, and some less. The highest possible Individual PAGA Payment to an

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Aggrieved Employee (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately $136.72. The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately $1.30.

Proposed Preliminary Approval Order

99. Plaintiffs file a proposed Preliminary Approval Order with this declaration. The proposed Preliminary Approval Order includes the Class Notice. The Class Notice will be delivered in English and Spanish translation. Based on my investigation, the Class Members all understand English, Spanish or both. The Class Notice does not include any other forms. The Settlement Agreement is not attached to the proposed Preliminary Approval Order. I have carefully reviewed both the terms and the terminology of the proposed Preliminary Approval Order and accompanying Class Notice to confirm that the various documents are internally consistent, consistent with each other, and consistent with the Settlement Agreement.

100. **Identity of Administrator.** The proposed Preliminary Approval Order states the name of the Administrator, and describes the nature of the services that the Administrator will be required to perform, either directly or by reference to the Settlement Agreement.

101. **Exclusion Requests.** The proposed Preliminary Approval Order provides that any exclusion request shall be submitted to the Administrator rather than filed with the Court. The proposed Preliminary Approval Order does not require the Class Member to send copies of the exclusion to counsel, but requires the Administrator to do so. The proposed Preliminary Approval Order provides that the Administrator shall file a declaration concurrently with the filing of Plaintiffs' motion for final approval with a copy of every exclusion request received by the Administrator.

102. **Objections.** The proposed Preliminary Approval Order provides

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that any objection shall be submitted to the Administrator rather than filed with the Court. The proposed Preliminary Approval Order does not require the Class Member to send copies of the objection to counsel, but requires the Administrator to do so. The proposed Preliminary Approval Order provides that the Administrator shall file a declaration concurrently with the filing of the motion for final approval with a copy of every objection received by the Administrator.

103. Neither the proposed Preliminary Approval Order or the Class Notice requires an objecting party to, either personally or through counsel, appear at the hearing on the motion for final approval for that party's objection to be considered. Neither the proposed Preliminary Approval Order or the Class Notice requires an objecting party to, either personally or through counsel, to file or serve, or to state in the objection, a notice of intention to appear at the hearing on the motion for final approval.

104. **Final Approval Hearing Date.** The proposed Preliminary Approval Order provides the date for the Final Approval Hearing as previously scheduled by the Court. The proposed Preliminary Approval Order requires the Administrator to give notice to any objecting party of any continuance of the hearing of the motion for final approval.

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

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

The Class Notice

107. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement Agreement ¶ 8.4.2. Although there are current employee Class Members, it is uncertain whether Defendants' records of their contact

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information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Class Notice (attached as **Exhibit** A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the estimated settlement shares for each Class Member. Additionally, the Notice will include the number of eligible Work Weeks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As such, the Parties' proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

108. The Settlement does not require Class Members to submit claims to participate.

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

110. As stated above, the Class Notice includes an estimate of the likely recovery by the individual Class Member. It also provides the estimated dollar value of a Workweek.

111. The Class Notice states that the Court has determined only that

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there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing.

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

113. The Class Notice describes the releases by Plaintiffs and the Class Members.

114. The lawsuit includes claim for civil penalties under PAGA. The Class Notice defines PAGA. It states that Aggrieved Employees may not opt out of the PAGA provisions of the Settlement. However, it does not bar them from objecting to the PAGA portions of the Settlement. The Class Notice also describes the terms of the settlement of the PAGA claim, including who is an Aggrieved Employee. The Class Notice provides an estimate of the individual Class Members' share of 25% of the PAGA Penalties and advises Class Members that the payments will be reported on a Form 1099.

115. The Class Notice describes the objection process and instructs the objecting Class Member that the objection must be delivered to the Administrator. It also states the name and address of the Administrator. It also states the date by which the objection must be mailed or otherwise delivered.

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

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117. The Class Notice (i) instructs the Class Member seeking exclusion that the request for exclusion must be mailed or delivered to the Administrator, (ii) states the name and address of the Administrator, and (iii) states the date by which the request for exclusion must be mailed or otherwise delivered.

118. The information required to be provided by a Class Member to elect not to participate in the Settlement does not exceed the minimum information necessary to (i) identify the person as a Class Member and (ii) contact the person to clarify any uncertainties.

119. An election by a Class Member to exclude him or herself from the Class will not result in exclusion from the PAGA portion of the Settlement.

Administrator Duties

120. The duties of the Settlement Administrator are spelled out in the Settlement and in the bid provided by Xpand Legal Consulting LLC, a true and correct copy of which is attached hereto as **Exhibit 16.**

Administration Costs

121. With regard to the settlement administration costs provision (Settlement ¶3), it is reasonable. Before agreeing to Xpand Legal Consulting LLC the Parties sought and reviewed bids from other reputable third-party administrators: (A) CPT Group, Inc. = $45,000.00; (B) Xpand Legal Consulting LLC = $38,900.00; (C) Simpluris, Inc. = $43,961.00; and D) Phoenix Settlement Administrators = $40,000.00. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 17**. A true and correct copy of the bid from Simpluris, Inc. is attached hereto as **Exhibit 18**. A true and correct copy of the bid from Phoenix Settlement Administrators is attached hereto as **Exhibit 19**. The bid provided by Xpand Legal Consulting LLC was in the lowest amount. Thus, the settlement administration costs provision should be given preliminary approval.

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Notice of Settlement to the LWDA

122. Pursuant to Labor Code § 2699(l)(2), Plaintiffs have provided notice of this settlement to the LWDA with the filing and service of this motion. A true and correct copy of Plaintiffs' submission with the LWDA and a confirmation email is attached hereto as **Exhibit 20**.

I declare under the penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed on Friday, May 24, 2024 at Los Angeles, California.

/s/ David Spivak
DAVID SPIVAK,
Declarant

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Attorneys for Plaintiffs and all others similarly situated
(Additional attorneys for parties on following page)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiffs,

vs.

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company; Express Services, Inc., a Colorado corporation dba Express Employment Professionals; and DOES 2–50, inclusive,

Defendants.

Case No. 3:21-cv-01120-L-JLB

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

Action filed:	July 16, 2021
Ctrm:	2125, The Honorable Allison H. Goddard

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This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between Plaintiffs Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez (collectively, "Plaintiffs") and Defendants O'Reilly Auto Enterprises, LLC ("O'Reilly") and Express Services, Inc. *dba* Express Employment Professionals ("Express") (together, "Defendants"). The Agreement refers to Plaintiffs and Defendants collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Action" means the Plaintiffs' lawsuit alleging wage and hour violations against Defendants captioned "Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez, on behalf of themselves, and all others similarly situated, and as 'aggrieved employees' on behalf of other 'aggrieved employees' under the Labor Code Private Attorneys General Act of 2004, *Plaintiffs*, vs. O'Reilly Auto Enterprises, LLC, a Delaware limited liability company; Express Services, Inc., a Colorado corporation *dba* Express Employment Professionals and DOES 2 through 50, inclusive, *Defendants,"* Case No. 3:21-cv-01120-L-JLB initiated on June 16, 2021 and pending in United States District Court, Southern District of California.

1.2. "Administrator" means Xpand Legal Consulting LLC, 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. "Aggrieved Employee" means a person employed by one or both Defendants in California and classified as non-exempt, hourly employees, either

directly or indirectly through staffing agencies, and who worked at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time during the PAGA Period.

1.5. "Class" means all individuals employed by one or both Defendants as non-exempt, hourly employees, either directly or indirectly through staffing agencies, and who worked at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time during the Class Period. Defendants have represented that there are approximately 5,750 Class Members as of November 30, 2023, and Plaintiffs have relied on this number in entering into this Settlement Agreement.

1.6. "Class Counsel" means Alexandra K. Piazza of Berger Montague PC, David G. Spivak of The Spivak Law Firm, and Walter L. Haines of United Employees Law Group.

1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to litigate and resolve the Action, as awarded by the Court.

1.8. "Class Data" means Class Member identifying information in Defendants' possession including the Class Member's name, last-known mailing address, Social Security number, phone number, personal email address, and number of Class Period Workweeks and PAGA Workweeks.

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

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all

reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

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

1.12. "Class Period" means the period from July 05, 2018 to the date preliminary approval of the settlement is entered by the Court, or May 22, 2024, whichever is earlier.

1.13. "Class Representatives" means the named Plaintiffs in the Operative Complaint in the Action seeking Court approval to serve as Class Representatives.

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

1.15. "Court" means the United States District Court, Southern District of California.

1.16. "Defendants" means named Defendants O'Reilly Auto Enterprises, LLC and Express Services, Inc. *dba* Express Employment Professionals.

1.17. "Defense Counsel" means James M. Peterson, Edwin Boniske, and Derek W. Paradis of Higgs Fletcher & Mack, and Morgan Forsey of ArentFox Schiff LLP.

1.18. "Effective Date" means the date when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the

Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment. Defendants will not be obligated to fund this Settlement until and unless the Effective Date is reached.

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. "Gross Settlement Amount" means Four Million One Hundred Thousand Dollars and Zero Cents ($4,100,000.00), which is the total amount Defendant O'Reilly agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments, and the Administration Expenses Payment. O'Reilly shall not be required to pay more than the Gross Settlement Amount, with the exception of the employers' side payroll taxes.

1.22. "Individual Class Payment" means the Participating Class Member's *pro rata* share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.23. "Individual PAGA Payment" means the Aggrieved Employee's *pro rata* share of 25% of the PAGA Penalties calculated according to the number of PAGA Workweeks worked during the PAGA Period.

1.24. "Judgment" means the Judgment entered by the Court upon Granting Final Approval of the Settlement. A proposed final Judgment form is attached as Exhibit C.

1.25. "LWDA" means the California Labor and Workforce Development

Agency, the agency entitled, under Labor Code section 2699, subd. (i).

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

1.27. "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 Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.28. "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.

1.29. "PAGA Workweek" means any Workweek during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.30. "PAGA Period" means the period from May 11, 2020 to the date preliminary approval of the settlement is entered by the Court, or May 22, 2024, whichever is earlier.

1.31. "PAGA" means the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq*.

1.32. "PAGA Notices" means Jeffrey Pipich's letters to the LWDA of May 11, 2021 and January 4, 2022, Eve Storm's letters to the LWDA of August 11, 2021 and January 5, 2022, and Plaintiffs' letter to the LWDA of May 16, 2024 providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.33. "PAGA Penalties" means the total amount of PAGA civil penalties in the amount of $410,000.00 to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees ($102,500.00) and the 75% to LWDA

($307,500.00) in settlement of PAGA claims.

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

1.35. "Plaintiffs" means Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez, the named plaintiffs in the Action.

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

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

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

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

1.40. "Released Parties" means: Defendants and their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and agents.

1.41. "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.

1.42. "Response Deadline" means sixty (60) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail a Request for Exclusion from the Settlement, or (b) fax, email, or mail an Objection to the Settlement. The Response Deadline shall be extended by fourteen (14) days for Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator.

1.43. "Settlement" means the disposition of the Action effected by this

Agreement and the Judgment.

1.44. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

2.1. On May 11, 2021, Jeffrey Pipich ("Pipich") electronically submitted written notice to the LWDA of O'Reilly's violations of Labor Code §§ 510, 512, 558, 1174, 1182.11, 1194, and 1197.

2.2. On July 16, 2021, Pipich filed his FLSA collective action Complaint in the United States District Court for the Southern District of California. It was assigned to the Honorable Judge M. James Lorenz. Pipich's FLSA claims in the First Amended Complaint were dismissed on March 14, 2022.

2.3. On July 22, 2021, Pipich filed his First Amended Complaint asserting, among other things, PAGA claims on behalf of himself and similarly aggrieved employees for Defendant O'Reilly's Labor Code violations for unpaid wages for time spent in Covid-19 and security screenings, meal and rest break violations, failure to reimburse for business expenses, inaccurate wage statements, untimely wages, and related violations.

2.4. By letter dated August 11, 2021, Eve Storm ("Storm") gave written notice by certified mail to the LWDA of violations of the California Labor Code. Storm filed her PAGA representative action in the Riverside County Superior Court on October 15, 2021, case no. CVRI2202748. The bases for Storm's private attorney general action are Defendants' failure to pay all wages earned at the correct rates, including for time spent in security checks, failure to provide meal breaks, failure to authorize and permit rest breaks, failure to reimburse for expenses, failure to provide accurate and complete itemized wage statements, untimely wages during and at the conclusion of employment, failure to provide toilet and storage facilities,

lockers, and acceptable work temperatures, and failure to maintain accurate employment records.

2.5. On January 4, 2022, Pipich submitted an Amended PAGA Notice to the LWDA for violations of Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 and Wage Order 9.

2.6. On April 7, 2022, Pipich filed a Second Amended Complaint asserting only representative PAGA claims to recover civil penalties for violations of the Labor Code, including sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2350, and 2802.

2.7. On November 22, 2021, Storm filed an Amendment to Complaint to add O'Reilly in place of Doe Defendant 1.

2.8. On January 5, 2022, Storm sent a supplemental written notice by certified mail to the LWDA. On January 27, 2022, the Parties agreed to stay the Storm PAGA case pending the resolution of the first filed Pipich PAGA case.

2.9. On June 15, 2022, Pipich and O'Reilly participated in an early neutral evaluation conference in the United States District Court for the Southern District of California. The Parties engaged in settlement negotiations at that time. The disputes between the Parties did not resolve at that time.

2.10. On July 5, 2022, Storm filed a class action lawsuit against Defendants, *Eve Storm v. Express Services, Inc. dba Express Employment Professionals, at al*., Superior Court for the State of California, County of Riverside, Case No. CVR12202748. Storm's Class Action Complaint presented the following causes of action: Failure to pay all wages earned at the correct rates; Failure to provide meal periods; Failure to authorize and permit rest breaks; Failure to reimburse for expenses; Waiting time penalties; and Unfair competition.

2.11. On August 26, 2022, Defendant O'Reilly removed Storm's class action lawsuit to the United States District Court for the Central District of

California, case no. 5:22-cv-01510 FLA (MARx). The parties in the Storm Action entered into a tolling agreement and dismissed the class action pending the results of a mediation.

2.12. On February 14, 2023, Pipich and Storm participated in mediation with Defendants and mediator Ann Kotlarski, Esq. The disputes between all the Parties did not resolve at that time.

2.13. On April 5, 2023, Storm filed another class action lawsuit against Defendants, titled *Eve Storm v. Express Services, Inc. dba Express Employment Professionals, at al*., United States District Court, Central District of California, Case No. 5:23-CV-00597-FLA-MAR. Storm's Class Action Complaint presented the following causes of action: Failure to pay all wages earned at the correct rates; Failure to provide meal periods; Failure to authorize and permit rest breaks; Failure to reimburse for expenses; Waiting time penalties; and Unfair competition. Defendants subsequently filed a motion to compel arbitration of this case.

2.14. On April 14, 2023, Pipich filed a Third Amended Complaint for Defendant O'Reilly's alleged failure to: (1) Provide all rest and meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned for all hours worked at the correct rates of pay; (4) Issue accurate and complete itemized wage statements; (5) Timely pay wages during and upon termination of employment and; (6) Provide toilet and storage facilities, lockers, change rooms, and acceptable work temperatures, and (7) Maintain accurate employment records.

2.15. On June 12, 2023, Plaintiff Gary Cull ("Cull") filed a class action complaint in the Superior Court of the State of California, County of Riverside, case no. CVRI2303008. It contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Our Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; and

(5) Unfair Competition. On August 14, 2023, Defendant O'Reilly removed the *Cull* lawsuit to the United States District Court for the Central District of California, case no. 5:23-cv-01623-FLA-MAR.

2.16. On December 26, 2023, Cull filed a First Amended Class Action Complaint adding Melissa Kolakowski and Daniel Lopez as named plaintiffs. It contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Our Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; (5) Waiting Time Penalties; and (5) Unfair Competition.

2.17. On February 5 and 21, 2024, the Parties participated in mandatory settlement conferences which led to this Agreement to settle the Action.

2.18. On May 16, 2024, pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave additional written notice to Defendants and the LWDA of Defendants' violations of the Labor Code.

2.19. On May 21, 2024, Plaintiff Pipich filed a Fourth Amended Complaint that added Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez as additional Plaintiffs and Express Services, Inc. in place of Doe Defendant 1. It contains the claims made in the prior actions of the Plaintiffs recounted above and additional factual allegations investigated and discovered by the Plaintiffs which were part of the settlement negotiations at the mediation and mandatory settlement conferences. The Fourth Amended Complaint is the "Operative Complaint."

2.20. During discovery and settlement negotiations, and prior the final mandatory settlement conference, Plaintiffs obtained, through formal and informal discovery the number of Workweeks, sample time records, sample payroll records, sample schedules, written policies, the number of comparable employees, average rates of pay, and related information. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval.

2.21. The Court has not granted class certification and the matters listed in Section 2.22.2 have not been certified.

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

2.22.1. *Stephanie Perez v. O'Reilly Auto Enterprises, LLC,* Superior Court of the State of California for County of San Joaquin, case no. STK-CV-UOE-2023-7289, filed on July 14, 2023, and amended on September 23, 2023. This is a class and PAGA action for (1) Failure To Provide Duty-Free Meal Periods; (2) Failure To Provide Duty-Free Rest Periods; (3) Failure To Pay Minimum Wages; (4) Failure To Pay Overtime Wages; (5) Unfair, Competition; (6) Failure To Provide Accurate Wage Statements; (7) Failure To Pay All Wages Owed Upon Termination; and (8) Civil Penalties Under PAGA.; and

2.22.2. *Sally Fonseca v. O'Reilly Auto Enterprises, LLC*, Superior Court of the State of California for County of San Joaquin, case no. STK-CV-UOE-2024-354, filed on January 11, 2024. This is a class and PAGA action for (1) Failure To Pay Minimum Wages; (2) Failure To Pay Overtime Wages; (3) Meal Period Liability; (4) Rest Break Liability; (5) Failure To Provide Accurate Itemized Employee Wage Statements; (6) Violation Of Labor Code Section 1174; (7) Violation Of Labor Code Sections 2102 And 2103; (8) Failure To Pay Wages Timely And Upon Separation Of Employment; And (9) Violation Of Unfair Competition Law.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Defendant O'Reilly promises to pay $4,100,000.00 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. Defendant O'Reilly has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraphs 6.1 and 6.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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

3.2.1. To Plaintiff: Class Representative Service Payments to the Class Representatives of not more than $55,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment each Class Representative is entitled to receive as a Participating Class Member). This total will be divided as follows: (1) $22,500.00 to Jeffrey Pipich; (2) $10,000.00 to Eve Storm; (3) $7,500 to Gary Cull; (4) $7,500 to Melissa Kolakowski; and (5) $7,500 to Daniel Lopez. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than sixteen (16) calendar days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. Plaintiffs and the Class Representatives shall not have the right to revoke or cancel this Agreement if the Court does not approve any or all of the requested Class Representative Service Payments. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. The Class Representatives agree to provide the Administrator with an updated IRS Form W-9 before the Class Representative Service Payments are issued to the extent required

by the Settlement Administrator. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments and shall hold Defendants harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Payments.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount (*i.e.*, 33 and 1/3%) which is estimated to be $1,366,666.67, and a Class Counsel Litigation Expenses Payment of not more than $120,000.00. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than fourteen (14) calendar days prior to the Response Deadline, which shall be decided as part of 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. This Agreement is not contingent upon the Court's decision to award Class Counsel any particular amount, or any amount, for Class Counsel Fees Payment or Class Litigation Expenses Payment. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Counsel shall be solely responsible for the division and distribution of any and all Court-approved Class Counsel Fees Payment and Class Litigation Expenses Payment. Class Counsel agrees to release Defendants and the Released Parties from any responsibility for and liability arising out of or related to the division and distribution of any Court-approved Class Counsel Fees Payment and Class Litigation Expenses Payment. Class Counsel agrees to assume all responsibility for the payment of any liens asserted by any former attorneys in its firm and agrees to indemnify and hold harmless Defendants for any such lien. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using

one or more IRS 1099 Forms. Class Counsel agrees to provide the Administrator with an executed IRS Form W-9 before the Class Counsel Fees Payment and Class Litigation Expenses Payment are issued to the extent required by the Administrator. 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 Defendants harmless, and indemnifies Defendants, from any claim or liability for taxes, penalties, or interest arising as a result of the Class Counsel Fees Payment or the Class Litigation Expenses Payment.

3.2.3. To the Administrator: An Administration Expenses Payment not to exceed Forty Thousand Dollars and Zero Cents ($40,000.00) 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 less than $40,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

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

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

Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $410,000.00 to be paid from the Gross Settlement Amount, with 75% ($307,500.00) allocated to the LWDA PAGA Payment and 25% ($102,500.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties $102,500.00 by the total number of PAGA Workweeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Workweeks. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Should the Court not approve the PAGA Penalty allocation of the Gross Settlement Amount, Plaintiffs shall file additional Motions for Court Approval allocating more of the Gross Settlement Amount to Plaintiffs' PAGA claims if necessary. In this process, the Gross Settlement Amount will never be increased. In no event shall Defendants pay, or ever be obligated to pay, any sums exceeding the Gross Settlement Amount presently called for under this Agreement (except for employer share of Payroll Taxes).

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Members' Workweeks and Aggrieved Employees' Workweeks. Based on a review of their records to date, Defendants estimate there are 5,750 Class Members who collectively worked a total of 289,537 Workweeks, and 4,312 Aggrieved Employees who worked a total 78,609 of PAGA Workweeks, as of November 30, 2023.

4.2. Class Data. Not later than fifteen (15) calendar days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver all available Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if 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 Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant O'Reilly shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) calendar days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) calendar days after Defendant O'Reilly 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 Payments. 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 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 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (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 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 retuned undelivered without USPS forwarding address. Within seven (7) calendar 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 San Diego County Bar Foundation, a *cy pres* recipient agreed upon by the Parties and subject to the Court's approval.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants 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. DISMISSAL OF RELATED ACTIONS. Within fourteen (14) days after Final Approval, Plaintiffs shall dismiss the following cases, without prejudice:

- *Eve Storm v. O'Reilly Auto Enterprises, et al*., Riverside Superior Court, Case No. CVRI2104730, filed October 15, 2021. ("Storm I")
- *Eve Storm v. O'Reilly Auto Enterprises, et al*., United States District Court, Central District of California, Case No. 5:23-CV-00597-FLA-MAR, filed April 5, 2023. ("Storm II")
- *Gary Cull, et. al. v. O'Reilly Auto Enterprises, LLC*, United States District Court, Central District of California, Case No. 5:23-CV-01623-FLA-MAR, filed June 12, 2023. ("Cull")

The Parties shall bear their own respective attorneys' fees and costs related to the Storm I, Storm II, and Cull lawsuits, and agree they shall not pursue any other Party for any attorneys' fees or costs relating to the dismissal of these matters.

6. RELEASES OF CLAIMS. Effective on the date when Defendant O'Reilly fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as

follows:

6.1 Plaintiffs' Releases. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences of every kind and nature, actual or potential, known and unknown, which exist or could arise out of their employment and/or the end of their employment with Defendants, through and including the date of execution of this Agreement, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notices, or ascertained during the Action and released under 6.2, below ("Plaintiffs' Releases"). Plaintiffs' Releases do not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agrees, nonetheless, that Plaintiffs' Releases shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

6.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Releases, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of

executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims stated in the Operative Complaint and those based solely upon the facts alleged in the Operative Complaint. Upon entry of Judgment and funding of the Gross Settlement Amount, the Defendants and their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and agents shall be entitled to a release from the Settlement Class members of all class claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, of any nature and description whatsoever, that are either asserted in the Action, or could have been asserted in the Action based on the facts, claims, and theories plead in the Operative Complaint on file at the time of final approval, including but not limited to, Labor Code sections 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders which occurred during the Class Period. ("Released Class Claims") Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. Released Class Claims also includes all claims that were or that could have been alleged in the Action based on the facts stated in

the Operative Complaint, including but not limited to any claims for violations of the California Labor Code, and the relevant Wage Orders. The term "Released Class Claims" also includes Plaintiffs' claim that Defendants are liable for the attorneys' fees incurred to prosecute this Action on behalf of Class Members, including fees incurred for the services of Class Counsel, and any claim that Defendants are liable for any other remedies, civil penalties, statutory penalties, or interest under California law based on the facts alleged in the Operative Complaint. The term "Released Class Claims" also includes all claims that the Class Members may have against the Released Parties relating to (i) the payment, taxation and allocation of attorneys' fees and costs to Class Counsel pursuant to this Agreement, and (ii) the payment, taxation, and allocation of the Class Representative Service Payments pursuant to this Settlement Agreement. Class Members may discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Class Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist or have existed, upon any theory of law or equity now existing. It is the intent of the Parties that the Final Approval Order and Judgement entered by the Court shall have full res judicata and collateral estoppel effect and be final and binding upon Class Members regarding the Released Class Claims.

6.3 Release of PAGA Claims. Upon entry of Judgment and funding of the Gross Settlement Amount, Plaintiffs, on behalf of themselves and the State of California, and the Aggrieved Employees fully releases and discharge Defendants and their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and agents, from any and all claims for relief under the PAGA, based on the claims for penalties that could have been sought by the Labor Commissioner

or Plaintiffs based on the facts and legal claims as alleged in the Operative Complaint at the time of final approval by Plaintiffs in the Action and Plaintiffs' notice letters to the LWDA including, but not limited to, Labor Code sections 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under the PAGA, which occurred during the PAGA Period. Plaintiffs do not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and Plaintiffs will file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals. A Preliminary Approval Order form is attached as Exhibit B.

7.1 Defendants' Declaration in Support of Preliminary Approval. Within ten (10) calendar days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel signed Declarations from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and *Cy Pres* Recipient. In their Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement other than those expressly identified in Section 2.22.

7.2 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for

Preliminary Approval that includes an analysis of the Settlement under Rule 23 of the Federal Rules of Civil Procedure, and a request for approval of the PAGA Settlement under Labor Code section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) signed declarations from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the *Cy Pres* Recipient. In their Declarations, Plaintiffs and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement other than those expressly identified in Section 2.22.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing

in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

8. SETTLEMENT ADMINISTRATION.

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

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

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF")

under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

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

8.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar 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 with Spanish translation, if applicable. 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 Workweeks and PAGA Workweeks (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.

8.4.3 Not later than three (3) 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.

8.4.4 The deadlines for Class Members' written Objections, Challenges to Workweeks (disputes), and Requests for Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) 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 with the re-mailed Class Notice.

8.4.5 If the Administrator, Defendants or Class Counsel are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received 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 not later than fourteen (14) calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) 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 signed 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. The date of the postmark on the return mailing envelope or the date of the sent email shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted.

8.5.2 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.

8.5.3 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' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 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. Aggrieved Employees cannot exclude themselves from the PAGA portion of the Settlement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Workweeks (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. 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 Workweeks 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 Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

8.7 Objections to Settlement.

8.7.1 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 Payments.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) calendar 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). The postmark on the return mailing envelope or the date of the sent email shall be the exclusive means used to determine whether an Objection has been timely submitted. To be valid, the written objection must state the factual and legal grounds for the objection to the Settlement. The written objection must be signed by the Class Member submitting it, and it must state the person's full name, address, telephone number, and email address (if applicable). A Participating Class Member who has submitted a timely objection may attend the Final Approval Hearing (or personally retain a lawyer to object and attend at the Participating Class Member's

own cost).

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

8.7.4 No Solicitation of Exclusions or Objections. The Parties agree to use their best efforts to carry out the terms of this Agreement. At no time shall the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit an Objection or a Request for Exclusion from the Agreement or to appeal from the Court's Final Approval Order. Class Counsel shall not represent Class Members with respect to any objections or appeals to this Agreement. The Parties are not precluded from contacting Class Members in an effort to encourage them to participate in the Settlement.

8.8 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.

8.8.1 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, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final Approval 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.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) calendar days after the expiration of

the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and 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 submitted (whether valid or invalid).

8.8.3 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 Workweeks 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 Requests for Exclusion and Objections received.

8.8.4 Workweek and/or Workweek 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 Workweeks. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator's Declaration. Not later than fourteen (14) calendar 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 the Class Notices, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class

Members, the total number of Requests for Exclusion it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8.8.6 Final Report by Administrator. Within ten (10) calendar 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) calendar 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.

9. CLASS SIZE ESTIMATES. Based on its records, Defendant estimates that, as of November 30, 2023, (1) there are approximately 5,750 Class Members and 289,537 Total Workweeks during the Class period and (2) there were 4,312 Aggrieved Employees who worked 78,609 Workweeks during the PAGA Period.

10. DEFENDANT'S RIGHT TO WITHDRAW. If twenty-six (26) or more of the Settlement Class Members opt out, Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant O'Reilly will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants

must notify Class Counsel and the Court of its election to withdraw not later than fourteen (14) calendar days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

11. MOTION FOR FINAL APPROVAL. Not later than sixteen (16) calendar days before the calendared Final Approval Hearing, Plaintiffs 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. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven (7) calendar days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer via video conference or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

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

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

11.5 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 address the appellate court's concerns and to obtain Final Approval and entry of Judgment, 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.

12. AMENDED JUDGMENT. If any amended judgment is required, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. ADDITIONAL PROVISIONS.

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

13.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion

for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

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

13.3 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.

13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire

agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

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

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

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

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

13.9 Modification of Agreement. This Agreement, and all parts of it, may

be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

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

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

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

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

13.14 Use and Return of Class Data. Information provided to Class Counsel for mediation and settlement discussions, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, the early neutral evaluation conference, the mandatory settlement conferences, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) calendar 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, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

13.15 Headings. The descriptive heading of any section or paragraph of this

Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

13.17 Notice. All notices, demands or other communications between the Parties in 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 Plaintiffs:
David Glenn Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
david@spivaklaw.com

Alexandra K. Piazza, Esq.
Berger Montague PC
8241 La Mesa Blvd, Suite A
La Mesa, CA 91942
apiazza@bm.net

To Defendant:
James M. Peterson, Esq.
Derek W Paradis, Esq.
Higgs Fletcher & Mack
401 West A Street, Suite 2600
San Diego, CA 92101
Peterson@higgslaw.com
Paradisd@higgslaw.com

13.18 Execution in Counterparts. This Agreement may be executed in one

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

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

Dated: 5/22/2024 By: DocuSigned by: Jeffrey Pipich 83FD17DAD7DA4DE...
JEFFREY PIPICH

Dated: _____ By: _____
EVE STORM

Dated: _____ By: _____
GARY CULL

Dated: _____ By: _____
MELISSA KOLAKOWSKI

Dated: _____ By: _____
DANIEL LOPEZ

Dated: _____ By: _____
Tamara Conn, Senior Vice President Legal & General Counsel, for O'REILLY AUTO ENTERPRISES, LLC

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.

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Dated: _____ By: _____
JEFFREY PIPICH

Dated: 05 / 24 / 2024 By: _____
EVE STORM

Dated: 05 / 22 / 2024 By: _____
GARY CULL

Dated: 05 / 22 / 2024 By: _____
MELISSA KOLAKOWSKI

Dated: 05 / 23 / 2024 By: _____
DANIEL LOPEZ

Dated: _____ By: _____
Tamara Conn, Senior Vice President Legal & General Counsel, for O'REILLY AUTO ENTERPRISES, LLC

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.

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Dated: _____ By: _____
JEFFREY PIPICH

Dated: _____ By: _____
EVE STORM

Dated: _____ By: _____
GARY CULL

Dated: _____ By: _____
MELISSA KOLAKOWSKI

Dated: _____ By: _____
DANIEL LOPEZ

Dated: 05/22/2024 By: Tamara J. Conn
Tamara Conn, Senior Vice President Legal & General Counsel, for O'REILLY AUTO ENTERPRISES, LLC

Dated: 5/23/2024

By: DocuSigned by: Sarah Keates 1239141F94F8473...

Sarah Keates, Director and Senior Legal Counsel, for EXPRESS SERVICES, INC.

APPROVED AS TO FORM:

BERGER MONTAGUE PC

Dated: _____

By: _____

ALEXANDRA K. PIAZZA, Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, AND DANIEL LOPEZ, and all others similarly situated

THE SPIVAK LAW FIRM

Dated: _____

By: _____

DAVID GLENN SPIVAK, Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, AND DANIEL LOPEZ, and all others similarly situated

Dated: _____

By: _____
Sarah Keates, Director and Senior Legal Counsel, for EXPRESS SERVICES, INC.

APPROVED AS TO FORM:

BERGER MONTAGUE PC

Dated: May 21, 2024

By: _____
ALEXANDRA K. PIAZZA, Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, AND DANIEL LOPEZ, and all others similarly situated

THE SPIVAK LAW FIRM

Dated: _____

By: _____
DAVID GLENN SPIVAK, Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, AND DANIEL LOPEZ, and all others similarly situated

Dated: _____

By: _____

Sarah Keates, Director and Senior Legal Counsel, for EXPRESS SERVICES, INC.

APPROVED AS TO FORM:

BERGER MONTAGUE PC

Dated: _____

By: _____

ALEXANDRA K. PIAZZA, Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, AND DANIEL LOPEZ, and all others similarly situated

THE SPIVAK LAW FIRM

Dated: 05 / 22 / 2024

By: David Spivak

DAVID GLENN SPIVAK, Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, AND DANIEL LOPEZ, and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: 05 / 22 / 2024

By: _____

WALTER L. HAINES, Attorneys for Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, AND DANIEL LOPEZ, and all others similarly situated

HIGGS FLETCHER & MACK

Dated: _____

By: _____

DEREK W PARADIS, Attorneys for Defendant, O'REILLY AUTO ENTERPRISES, LLC

ARENTFOX SCHIFF LLP

Dated: _____

By: _____

MORGAN FORSEY, Attorneys for Defendant, EXPRESS SERVICES, INC.

UNITED EMPLOYEES LAW GROUP

Dated: _____ By: _____

WALTER L. HAINES, Attorneys for Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, AND DANIEL LOPEZ, and all others similarly situated

HIGGS FLETCHER & MACK

Dated: May 22, 2024 By: 

DEREK W PARADIS, Attorneys for Defendant, O'REILLY AUTO ENTERPRISES, LLC

ARENTFOX SCHIFF LLP

Dated: _____ By: _____

MORGAN FORSEY, Attorneys for Defendant, EXPRESS SERVICES, INC.

UNITED EMPLOYEES LAW GROUP

Dated: _____ By: _____

WALTER L. HAINES, Attorneys for Attorneys for Plaintiffs, JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, AND DANIEL LOPEZ, and all others similarly situated

HIGGS FLETCHER & MACK

Dated: _____ By: _____

DEREK W PARADIS, Attorneys for Defendant, O'REILLY AUTO ENTERPRISES, LLC

ARENTFOX SCHIFF LLP

Dated: 5/23/2024 By: _____

MORGAN FORSEY, Attorneys for Defendant, EXPRESS SERVICES, INC.

EXHIBIT A

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

Jeffrey Pipich, et al. v. O'Reilly Auto Enterprises, LLC, et. al.
3:21-CV-01120-L-JLB (S.D. Cal.)

The United States District Court for the Southern District of California authorized this Notice. Read it carefully!
It is 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 O'Reilly Auto Enterprises, LLC ("O'Reilly") and Express Services, Inc. *dba* Express Employment Professionals (together, "Defendants") for alleged violations of California's labor laws. The Action was filed by five employees Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez (collectively "Plaintiffs") and seeks payment of (1) wages and other relief for a class of all individuals employed by either or both Defendants as non-exempt, hourly employees, either directly or indirectly through staffing agencies, and who worked at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time between July 5, 2018 and <<END DATE>> ("Class Members"); and (2) penalties under the California Private Attorney General Act ("PAGA") for all individuals employed by either or both Defendants as non-exempt, hourly employees, either directly or indirectly through staffing agencies, and who worked at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time between May 11, 2020 and <<END DATE>> ("Aggrieved Employees"). July 5, 2018 and <<END DATE>> is the "Class Period." May 11, 2020 and <<END DATE>> is the PAGA Period.

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

Based on Defendant's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be $<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be $<<IndividualPAGAPaymentAmount>>**. The actual amount you may receive likely will be different and will depend on a

number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants' records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.) The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to a Class Member is estimated to be <<$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to be <<$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<$Lowest Individual Class Payment Amount>>. The highest Individual PAGA Payment to a Class Member is estimated to be <<$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<$Lowest Individual PAGA Payment Amount>>.

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement **The Opt-out Deadline is <<RESPONSE DEADLINE>>**	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. 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. Defendant O'Reilly must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiffs release Defendants from civil penalties it may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement **Written Objections Must be Submitted by <<RESPONSE DEADLINE>>**	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement by submitting a signed, written statement to the Settlement Administrator stating the basis for your objection.
You Can Participate in the <<FinalApprobvalHearingDate>> Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on **<<FinalApprovalHearingDate>>**. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform (if available and permitted by the Court).

You Can Challenge the Calculation of Your Workweek / Workweeks **Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>**	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Workweeks you worked at least one day during the Class Period and how many Workweeks you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Workweeks you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by **<<RESPONSE DEADLINE>>**. See Section **4** of this Notice.

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

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendant O'Reilly's California distribution centers. The Action accuses Defendants of violating California labor laws by failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of the Labor Code. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) ("PAGA").

O'Reilly and Express strongly deny violating any laws or failing to pay any wages and contends that at all times they treated workers fairly and in compliance with all applicable laws.

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

So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits. During the course of this litigation, which has spanned almost three years, the Parties have participated in several arm's length settlement conferences, including most recently, two virtual settlement conferences before a United States District Court Magistrate Judge in an effort to resolve the Action by negotiating an to end the case by agreement (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, Plaintiffs and Defendants 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, Defendants do not admit any violations or concede the merit of any claims.

The Parties, Class Counsel and Defense Counsel are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement other than the following:

> *Stephanie Perez v. O'Reilly Auto Enterprises, LLC,* Superior Court of the State of California for County of San Joaquin, case no. STK-CV-UOE-2023-7289, filed on July 14, 2023, and amended on September 23, 2023. This is a class and PAGA action for (1) Failure To Provide Duty-Free Meal Periods; (2) Failure To Provide Duty-Free Rest Periods; (3) Failure To Pay Minimum Wages; (4) Failure To Pay Overtime Wages; (5) Unfair, Competition; (6) Failure To Provide Accurate Wage Statements; (7) Failure To Pay All Wages Owed Upon Termination; and (8) Civil Penalties Under PAGA.
>
> *Sally Fonseca v. O'Reilly Auto Enterprises, LLC*, Superior Court of the State of California for County of San Joaquin, case no. STK-CV-UOE-2024-354, filed on January 11, 2024. This is a class and PAGA action for (1) Failure To Pay Minimum Wages; (2) Failure To Pay Overtime Wages; (3) Meal Period Liability; (4) Rest Break Liability; (5) Failure To Provide Accurate Itemized Employee Wage Statements; (6) Violation Of Labor Code Section 1174; (7) Violation Of Labor Code Sections 2102 And 2103; (8) Failure To Pay Wages Timely And Upon Separation Of Employment; And (9) Violation Of Unfair Competition Law.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant O'Reilly 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 Aggrieved Employees. 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?

A. Gross Settlement Amount. Defendant O'Reilly Will Pay $4,100,000.00 as the Gross Settlement Amount ("Gross Settlement"). Defendant O'Reilly 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 Payments, Class Counsel's attorney's fees and expenses, the Administration Expenses Payment, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant O'Reilly will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

1. Attorney Fees and Costs. Up to $1,366,666.67 (33 and 1/3% of the Gross Settlement to Class Counsel for attorneys' fees and up to $120,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

2. Class Representative Service Awards. Up to $55,000.00 for Class Representative Service Awards for filing the Action, working with Class Counsel and representing the Class. The Class Representative Service Awards will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payment and any Individual PAGA Payment. Plaintiffs seek to divide the $55,000 Class Representative Service Awards as follows: (1) $22,500.00 to Jeffrey Pipich; (2) $10,000.00 to Eve Storm; (3) $7,500 to Gary Cull; (4) $7,500 to Melissa Kolakowski; and (5) $7,500 to Daniel Lopez.

3. Administration Expenses Payment. Up to $40,000.00 to the Administrator for services administering the Settlement.

4. PAGA Penalties. Up to $410,000.00 for PAGA Penalties,

allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Workweeks.

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

Based on their records, Defendants estimated that, as of the date of the Settlement, (1) there are 5,750 Class Members and 289,537 total Workweeks during the Class period and (2) there were 4,312 Aggrieved Employees who worked 78,609 Workweeks during the PAGA Period. If the Workweeks and/or Class Members as of May 22, 2024 exceeds the referenced 289,537 Workweeks and/or 5,750 Class Members by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class Representative Service Payments, and the LWDA payment, will increase proportionally according to the number of additional Workweeks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

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

D. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of 10.00% of each Individual Class Payment to taxable wages ("Wage Portion") and 90.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant O'Reilly 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 Plaintiffs and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

E. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you do not cash it by the void date, your check will be automatically cancelled, and the monies will irrevocably lost to you because they will be paid to a non-profit organization or foundation, the San Diego County Bar Foundation ("Cy Pres").

F. 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 Defendants have agreed that, in either case, the Settlement will be void: Defendant O'Reilly will not pay any money and Class Members will not release any claims against Defendants.

G. Administrator. The Court has appointed a neutral company, Xpand Legal Consulting LLC (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion and Objections. The Administrator will also decide Class Member challenges of Workweeks, 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.

H. Participating Class Members' Release. After the Judgment is final and Defendant O'Reilly 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 Defendants or their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and agents for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:
All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims stated in the Operative Complaint and those based solely upon the facts alleged in the Operative Complaint. Upon entry of Judgment and funding of the Gross Settlement Amount, the Defendants and their parents, subsidiaries, affiliated entities, franchisors,

franchisees, officers, employees, and agents shall be entitled to a release from the Settlement Class members of all class claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, of any nature and description whatsoever, that are either asserted in the Action, or could have been asserted in the Action based on the facts, claims, and theories plead in the Operative Complaint on file at the time of final approval, including but not limited to, Labor Code sections 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders which occurred during the Class Period. ("Released Class Claims") Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. Released Class Claims also includes all claims that were or that could have been alleged in the Action based on the facts stated in the Operative Complaint, including but not limited to any claims for violations of the California Labor Code, and the relevant Wage Orders. The term "Released Class Claims" also includes Plaintiffs' claim that Defendants are liable for the attorneys' fees incurred to prosecute this Action on behalf of Class Members, including fees incurred for the services of Class Counsel, and any claim that Defendants are liable for any other remedies, civil penalties, statutory penalties, or interest under California law based on the facts alleged in the Operative Complaint. The term "Released Class Claims" also includes all claims that the Class Members may have against the Released Parties relating to (i) the payment, taxation and allocation of attorneys' fees and costs to Class Counsel pursuant to this Agreement, and (ii) the payment, taxation, and allocation of the Class Representative Service Payments pursuant to this Settlement Agreement. Class Members may discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Class Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist or have existed, upon any theory of law or equity now existing. It is the intent of the Parties that the Final Approval Order and Judgement entered by the Court shall have full res judicata and collateral estoppel effect and be final and binding upon Class Members regarding the Released Class Claims.

I. The PAGA Release. After the Court's Judgment is final, and Defendant O'Reilly has paid the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiffs, on behalf of themselves and the State of California, and the Aggrieved Employees fully releases and discharges Defendants and their parents, subsidiaries, affiliated entities, officers, franchisors, franchisees, employees, and agents, from any and all claims for relief under the PAGA, based on the claims for penalties that could have been sought by the Labor Commissioner or Plaintiffs based on the facts and legal claims as alleged in the Operative Complaint at the time of final approval (with the inclusion of the facts and claims mentioned in paragraph 6 above) by Plaintiffs in the Action and Plaintiffs' notice letters to the LWDA including, but not limited to, Labor Code sections 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under the PAGA, which occurred during the PAGA Period. Plaintiffs do not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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

B. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing $102,500.00 by the total number of PAGA Workweeks worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Workweeks worked by each individual Aggrieved Employee.

C. Workweek Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Workweeks you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until <<RESPONSE DEADLINE>> to challenge the number of Workweeks credited to you. You can submit a workweek challenge by signing and sending a letter to the Administrator by email, fax or regular U.S. mail outlining

the basis for your challenge.

You need to support your challenge by submitting copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks based on Defendants' records as accurate unless you send copies of records containing contrary information to the Administrator. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission. The Administrator's decision is final. You cannot appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

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

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

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

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

Email, fax, or mail a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. 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 *Jeffrey Pipich et al. vs. O'Reilly Auto Enterprises, LLC*, Case No. 3:21-cv-01120-L-JLB, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. You should send your Request for Exclusion to the Administrator by email, fax, or regular U.S. mail. **You must send to the Administrator your request to be excluded by**

<<RESPONSE DEADLINE>>, or it will be invalid. Section 9 of the Notice has the Administrator's contact information. If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least fourteen (14) days prior to the Response Deadline, Plaintiffs will file in Court 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 Plaintiffs are requesting as a Class Representative Service Award. At least sixteen (16) days before the Final Approval Hearing, Plaintiffs will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair. You may view these documents and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's website <<COURT WEBSITE>>.

The deadline for sending written objections to the Administrator is <<RESPONSE DEADLINE>>. 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, *Jeffrey Pipich et al. vs. O'Reilly Auto Enterprises, LLC*, case no. 3:21-cv-01120-L-JLB, and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information. You should send your objection to the Administrator by email, fax, or regular U.S. mail. A Participating Class Member who has submitted a timely objection may attend the Final Approval Hearing (or personally retain a lawyer to object and attend at your own cost). 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 <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Courtroom 5140 of the United States District Court, Southern District of California, located at Edward J. Schwartz United States Courthouse, 221 West Broadway, San Diego, CA 92101 (the Honorable Allison H. Goddard, United States Magistrate

Judge). 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, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend). Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the Administrator's website at <<ADMINISTRATOR'S WEBSITE>>. You can also telephone or send an email to the Administrator using the contact information listed below, or consult the Court website by going to (http://www.<< COURT'S WEBSITE>>.aspx) and entering the Case Number for the Action, Case No. 3:21-cv-01120-L-JLB. You can also make an appointment to personally review court documents in the Clerk's Office at the United States District Court, Southern District of California, located at Edward J. Schwartz United States Courthouse, 221 West Broadway, San Diego, CA 92101 by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

Class Counsel:

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david@spivaklaw.com
Telephone: (213) 725-9094

Alexandra K. Piazza, Esq.
Berger Montague PC
8241 La Mesa Blvd, Suite A

La Mesa, CA 91942
apiazza@bm.net
Telephone: (619) 489-0300

Administrator:

Name of Company: Xpand Legal Consulting LLC
Email Address: ___
Mailing Address: ___
Telephone: ___
Fax Number: ___

O'Reilly Counsel:

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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 you do not request a replacement by the void date, you will have no way to recover the money.

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 B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company; EXPRESS SERVICES, INC., a Colorado corporation dba Express Employment Professionals; and DOES 2–50, inclusive,

Defendant(s).

Case No. 3:21-CV-01120-L-JLB

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT

Ctrm: 2125, The Honorable Allison H. Goddard

The Unopposed Motion of Plaintiffs Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez (hereafter referred to as "Plaintiffs") for Preliminary Approval of a Class Action Settlement (the "Motion") was considered by the Court, The Honorable Allison H. Goddard presiding. The Court having considered the Motion, the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement"), and supporting papers, HEREBY ORDERS THE FOLLOWING:

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

2. For purposes of this Preliminary Approval Order, the "Settlement Class" means all individuals employed by Defendants as non-exempt, hourly employees, either directly or indirectly through staffing agencies, at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time between July 5, 2018 and <<END DATE>>.

3. Based on its records, Defendants estimate that, as of November 30, 2023, (1) there are 5,750 Class Members and 289,537 Total Workweeks during the Class period and (2) there were 4,312 Aggrieved Employees who worked 78,609 Workweeks during the PAGA Period. "Effective Date" means the date when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The

Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

4. This action is provisionally certified pursuant to Rule 23 of the Federal Rules of Civil Procedure as a class action for purposes of settlement only with respect to the proposed Settlement Class.

5. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of the 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 the Settlement Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant 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.

6. 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, Workweeks in the Class Data.

7. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, if applicable, substantially in the form attached to this Order 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 Workweeks and PAGA Workweeks (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.

8. Not later than three (3) 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.

9. Class Counsel's contact information is David Glenn Spivak, Esq., The Spivak Law Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069, and Alexandra K. Piazza, Esq., Berger Montague PC, 8241½ La Mesa Blvd. La Mesa, CA 91942. Defense Counsel's contact information is James M. Peterson and Derek W Paradis, Esq., Higgs Fletcher & Mack, 401 West A Street, Suite 2600, San Diego, CA, 92101.

10. The deadlines for Class Members' written objections, challenges to workweeks (disputes), and requests for exclusion will be extended an additional fourteen (14) days beyond the sixty (60) 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 with the re-mailed Class Notice.

11. If the Administrator, Defendants 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 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 the Settlement Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

12. Requests for Exclusion. Class Members who wish to exclude themselves from the Class Settlement must send to the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member 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.

13. 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.

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

15. 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. Aggrieved Employees cannot opt out of the PAGA portion of the Settlement. Plaintiffs, on behalf of herself and the State of California, and the Aggrieved Employees, release all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiffs' pre-filing letter to the LWDA; Plaintiffs do not release any claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

16. Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) 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 Workweeks and PAGA Workweeks (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. 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 Workweeks 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 Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks along with the Administrator's determination of the challenges to Defense Counsel and Class Counsel.

17. Objections to Settlement. Only Participating Class Members may object to the Settlement, 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 Payments. Participating Class Members may send written objections to the Administrator, by fax, email, or

mail. To be valid, the written objection must state the factual and legal grounds for the objection to the Settlement. The written objection must be signed by the Class Member submitting it, and it must state the person's full name, address, telephone number, and email address (if applicable). A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) 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). The Participating Class Member who has submitted a timely objection may attend the Final Approval Hearing (or personally retain a lawyer to object and attend at their own cost).

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

19. Not later than fourteen (14) days before the date by which Plaintiffs are 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 the Settlement Agreement, including, but not limited to, its mailing of the Class Notices, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion it received (both valid or invalid), the

number of written Objections, and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

20. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to this Order.

21. The Court approves, for settlement purposes only Berger Montague PC, The Spivak Law Firm, and United Employees Law Group as Class Counsel.

22. The Court approves, for settlement purposes only, Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez as the Class Representatives.

23. The Court approves Xpand Legal Consulting LLC as the Administrator.

24. The Court preliminarily approves Class Counsel's request for attorneys' fees and costs subject to final review by the Court. Class Counsel shall file a Motion for Approval of Attorneys' Fees and Costs fourteen (14) days before the Response Deadline.

25. The Court preliminarily approves the estimated Administrator costs payable to the Administrator subject to final review by the Court.

26. The Court preliminarily approves Plaintiffs' Class Representative

Service Payment subject to final review by the Court.

27. A Final Approval Hearing shall be held on ___ at ___**.m.** in Courtroom 5140 of the United States District Court, Southern District of California, located at the Edward J. Schwartz United States Courthouse, 221 West Broadway, San Diego, CA 92101 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Service Payments to the Class Representatives. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before ___. Plaintiffs' counsel must give notice to any objecting party of any continuance of the hearing of the motion for final approval.

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

29. The Court expressly reserves the right to adjourn or continue the Final

Approval Hearing from time to time without further notice to members of the Class.

IT IS SO ORDERED.

DATE	**THE HONORABLE ALLISON H. GODDARD** **UNITED STATES DISTRICT COURT MAGISTRATE JUDGE**

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company; EXPRESS SERVICES, INC., a Colorado corporation dba Express Employment Professionals; and DOES 2–50, inclusive,

Defendant(s).

Case No. 3:21-CV-01120-L-JLB

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

Ctrm: 2125, The Honorable Allison H. Goddard

This matter came on for hearing on ___ at ___.m. in Department 5140 of the above-captioned court on Plaintiffs' Motion for Final Approval of a Class Action Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure, as set forth in the Class Action And PAGA Settlement Agreement And Class Notice (the "Settlement") filed herewith which provides for a Gross Settlement Amount ("GSA") of up to $4,100,000.00 in compromise of all disputed claims on behalf of all individuals employed by Defendants as non-exempt, hourly employees, either directly or indirectly through staffing agencies, at one of Defendant O'Reilly Auto

Enterprises, LLC's distribution centers in California at any time between July 5, 2018 and <<END DATE>> ("Settlement Class Period"). All capitalized terms used herein shall have the same meaning as defined in the Settlement.

In accordance with the Court's prior Order Granting Preliminary Approval of Class Action Settlement, Class Members have been given notice of the terms of the Settlement and the opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its terms. Having received and considered the Settlement, the supporting papers filed by the Parties, and the evidence and argument received by the Court in conjunction with the motions for preliminary and final approval of the Settlement, the Court grants final approval of the Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING DETERMINATIONS[1]:

1. The Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary Approval of Class Action Settlement of ___, the Class Notice was sent to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of the terms of the Settlement, their right to receive their

[1] A true and correct copy of the Court's ruling on the Motion for Final Approval of Class Action Settlement entered on ___ is attached hereto as **Exhibit A** and incorporated by reference. A true and correct copy of the Court's Minute Order dated ___ is attached hereto as **Exhibit B** and incorporated by reference.

proportional share of the Settlement, their right to request exclusion, their right to comment upon or object to the Settlement, and their right to appear in person or by counsel at the final approval hearing and be heard regarding final approval of the Settlement. Adequate periods of time were provided by each of these procedures. No member of the Settlement Class presented written objections to the proposed Settlement as part of this notice process, stated an intention to appear, or actually appeared at the final approval hearing.

2. For purposes of this Final Order and Judgment, the Class Members are all individuals employed by Defendants as non-exempt, hourly employees, either directly or indirectly through staffing agencies, at one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at any time between July 5, 2018 and <<END DATE>> ("Settlement Class Period").

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

Release by Plaintiffs and Class Members. The Parties agree that it is their intent that the resolution set forth in this Settlement will release and discharge the

Released Claims by way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action) against the Released Parties. This release will not take effect until Defendant has paid the Gross Settlement Amount in full per this Settlement Agreement.

PAGA Release. Plaintiffs release all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiffs pre-filing letters to the LWDA; Plaintiffs do not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

"**Released Claims**" shall mean all claims stated in the Operative Complaint and based solely on the facts alleged in the Operative Complaint. **"Released Parties"** shall mean Defendants and their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and agents.

2. The Court further finds and determines that the terms of the Settlement are fair, reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and provisions of the Settlement, including the release of claims contained therein, should be and hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement according to its terms. As of the Effective

Date of Settlement, and for the duration of the Settlement Class Period, all Class Members are hereby deemed to have waived and released all Released Claims and are forever barred and enjoined from prosecuting the Released Claims against the Released Parties as fully set forth in the Settlement. No objections were received by the Parties or the Court through the date of this Final Order and Judgment. The Court finds ___ Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by the Administrator and therefore is/are not in the Settlement Class.

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

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

a. Class Counsel fees & costs of $1,366,666.67 in attorneys' fees plus Class Counsel's actual litigation costs, which presently are $_____, and are

not to exceed $120,000.00;

b. $55,000.00 as a Class Representative Service Payments payable to Plaintiffs for their services as a Class Representatives as follows: (1) $22,500.00 to Jeffrey Pipich; (2) $10,000.00; (3) $7,500 to Gary Cull; (4) $7,500 to Melissa Kolakowski; and (5) $7,500 to Daniel Lopez;

c. $40,000.00 in costs of the Administrator payable to Xpand Legal Consulting LLC for its services as the Administrator; and

d. Payment of $307,500.00 (75% of the ($410,000.00 PAGA penalty) to the LWDA.

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

8. Within fourteen (14) calendar days of the Effective Date of Settlement, Defendant O'Reilly Auto Enterprises, LLC ("O'Reilly") shall deposit the Settlement proceeds in an account designated by the Administrator: (i) the total amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved Class Counsel fees & costs, (iii) the Court-approved Class

Representative Service Payments, (iv) the Court-approved costs of the Administrator, (v) the payment to the LWDA, and (vi) the total amount of all Individual PAGA Payments to Aggrieved Employees.

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

10. Pursuant to Federal Rule of Civil Procedure 23 and the Settlement, Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement check. After the expiration of the 180-day period, on Defendant's behalf, the Administrator shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on the Residue at the legal rate of interest from the date of entry of the initial judgement to _____.

11. The Parties shall file a final accounting report by ___. A non-appearance case review of a final report is scheduled for **___ at ___.m. in Courtroom 5140**. The Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final Order and Judgment by **___,** which includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds

to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for the class and defense counsel in accord with the proposed Amended Final Order and Judgment. If there are objections by any party or non-party, class counsel shall immediately notify the Court and the matter will be set for further hearing. A non-appearance hearing for the lodging of the stipulation and proposed order and separate amended judgment is scheduled for **___ at ___.m. in Courtroom 5140**.

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

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

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

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

16. The Settlement is not an admission by Defendants nor is this Final Order and Judgment a finding of the validity of any claims in the Action or of any

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

17. This document shall constitute a Judgment.

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE	**THE HONORABLE ALLISON H. GODDARD**

UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

EXHIBIT 2

JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EVE STORM,

Plaintiff,

v.

O'REILLY AUTO ENTERPRISES, LLC, *et al.*,

Defendants.

Case No. 5:23-cv-00597-FLA (MARx)

ORDER DISMISSING ACTION [DKT. 47]

On April 29, 2024, Plaintiff Eve Storm ("Plaintiff") and Defendant O'Reilly Auto Enterprises, LLC ("Defendant") filed a Notice of Settlement of Class Action ("Notice of Settlement"). Dkt. 47. The parties state they have reached a class-wide settlement that will resolve all disputes between the parties once approved, and anticipate seeking preliminary approval of the class action settlement within approximately 90 days in the action styled *Pipich v. O'Reilly Auto Enterprises, LLC*, Case No. 3:21-cv-01120-AHG, in the Southern District of California. Dkt. 47 at 3. Accordingly, the parties request the court vacate all pretrial and trial dates and deadlines and stay the action pending the approval of the class action settlement. *Id.*

/ / /

Having considered the Notice of Settlement and finding good cause therefor, the court hereby ORDERS:

1. All deadlines governing this action are VACATED.
2. The court DISMISSES the action without prejudice. The court retains jurisdiction to vacate this Order and reopen the action within 180 days from the date of this Order, provided any request by a party to do so shall make a showing of good cause as to why the settlement has not been completed within the 180-day period, what further settlement processes are necessary, and when the party making such a request reasonably expects the process to be concluded.
3. This Order does not preclude the filing of a stipulation of dismissal with prejudice pursuant to Fed. R. Civ. P. 41, which does not require approval of the court. Such stipulation shall be filed within the aforementioned 180-day period, or by such later date ordered by the court pursuant to a stipulation by the parties that conforms to the requirements of a showing of good cause stated above.

IT IS SO ORDERED.

Dated: May 2, 2024

FERNANDO L. AENLLE-ROCHA
United States District Judge

JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GARY CULL, *et al.*,

Plaintiffs,

v.

O'REILLY AUTO ENTERPRISES, LLC, *et al.*,

Defendants.

Case No. 5:23-cv-01623-FLA (MARx)

ORDER DISMISSING ACTION [DKT. 32]

On April 29, 2024, Plaintiffs Gary Cull, Melissa Kolakowski, and Daniel Lopez (collectively, "Plaintiffs") and Defendant O'Reilly Auto Enterprises, LLC ("Defendant") filed a Notice of Settlement of Class Action ("Notice of Settlement"). Dkt. 32. The parties state they have reached a class-wide settlement that will resolve all disputes between the parties once approved, and anticipate seeking preliminary approval of the class action settlement within approximately 90 days in the action styled *Pipich v. O'Reilly Auto Enterprises, LLC*, Case No. 3:21-cv-01120-AHG, in the Southern District of California. Dkt. 32 at 3. Accordingly, the parties request the court vacate all pretrial and trial dates and deadlines and stay the action pending the approval of the class action settlement. *Id.*

Having considered the Notice of Settlement and finding good cause therefor, the court hereby ORDERS:

1. All deadlines governing this action are VACATED.
2. The court DISMISSES the action without prejudice. The court retains jurisdiction to vacate this Order and reopen the action within 180 days from the date of this Order, provided any request by a party to do so shall make a showing of good cause as to why the settlement has not been completed within the 180-day period, what further settlement processes are necessary, and when the party making such a request reasonably expects the process to be concluded.
3. This Order does not preclude the filing of a stipulation of dismissal with prejudice pursuant to Fed. R. Civ. P. 41, which does not require approval of the court. Such stipulation shall be filed within the aforementioned 180-day period, or by such later date ordered by the court pursuant to a stipulation by the parties that conforms to the requirements of a showing of good cause stated above.

IT IS SO ORDERED.

Dated: May 2, 2024

FERNANDO L. AENLLE-ROCHA
United States District Judge

EXHIBIT 3

BERGER | MONTAGUE

ALEXANDRA K. PIAZZA / *SHAREHOLDER*
d 215.875.3063 | apiazza@bm.net

May 16, 2024

Electronically Submitted Pursuant to Cal. Lab. Code § 2699.3(a)
Attn: PAGA Administrator
Labor and Workforce Development Agency
http://dir.tflaforms.net

Re: Amended Private Attorneys General Act ("PAGA") Notice
LWDA Case No. LWDA-CM-831908-21

Employee: Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez

Employer: O'Reilly Auto Enterprises, LLC

Dear PAGA Administrator:

Pursuant to California Labor Code § 2699.3(a)(1), Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez (collectively referred to as the "Named Aggrieved Employees") hereby notify the California Labor & Workforce Development Agency ("LWDA") that O'Reilly Auto Enterprises, LLC ("O'Reilly") violated their rights and those of all other individuals O'Reilly employed in California, either directly or indirectly through staffing agencies, as hourly, non-exempt employees, including, but not limited to, pickers, drivers, warehouse workers, material handlers, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, who worked at an O'Reilly distribution center during the period of for the period of May 11, 2020 to the present (hereafter the "Aggrieved Employees") and that they intend to seek civil penalties pursuant to California Labor Code §§ 2699(a) and (f) for violations of California Labor Code §§ 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2102, 2103, 2350, 2802, and 6404, on behalf of themselves and all other Aggrieved Employees.

Mr. Pipich first submitted a PAGA notice regarding O'Reilly's Labor Code violations on May 11, 2021. Mr. Pipich subsequently submitted an amended PAGA notice regarding O'Reilly's Labor Code violations on January 4, 2022. By letter dated August 11, 2021, Eve Storm gave written notice by certified mail to the LWDA and O'Reilly of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. On January 5, 2022, Ms. Storm sent a supplemental written notice by certified mail to the LWDA. The Named Aggrieved

Employees now amend Mr. Pipich's prior notice to also address additional Labor Code violations by O'Reilly that have affected the Named Aggrieved Employees and the Aggrieved Employees.

At all relevant times, O'Reilly has employed persons, conducted business, and engaged in illegal payroll practices and policies throughout California. The Named Aggrieved Employees and all of the other Aggrieved Employees are "employees" within the meaning of IWC Wage Order 9-2001 (hereafter "the Wage Order") section 2, subdivision (F), and "Aggrieved Employees" within the meaning of Labor Code § 2699(c).

Statement of Facts

In or about July 2015, O'Reilly began to employ Mr. Pipich at its Distribution Center Number 25 in Moreno Valley in the position of City Counter Route Driver and warehouse employee. O'Reilly classified Mr. Pipich as non-exempt and paid him on an hourly basis. O'Reilly continuously employed Mr. Pipich in this capacity until on or about February 2021 when his employment ended.

Ms. Storm worked for O'Reilly as a picker at O'Reilly's Moreno Valley distribution center from approximately October 19, 2020 until January 7, 2021. Mr. Cull worked for O'Reilly as an outbound material handler at O'Reilly's Moreno Valley distribution center from December 2018 through September 20, 2019. Ms. Kolakowski worked for O'Reilly as a material handler and custodian at O'Reilly's Stockton distribution center from October 29, 2019 to January 27, 2022. Mr. Lopez worked for O'Reilly as a material handler and maintenance specialist at O'Reilly's Moreno Valley distribution center from June of 2017 to March 2020 and from June 2022 to October of 2023. Mr. Pipich, Ms. Storm, Ms. Kolakowski, Mr. Cull, and Mr. Lopez all similarly suffered O'Reilly's Labor Code violations as described by Mr. Pipich and Ms. Storm in their prior PAGA notices and as asserted throughout this letter.

At all relevant times, O'Reilly issued wages to Named Aggrieved Employees and all of the other Aggrieved Employees on a weekly and/or bi-weekly basis and paid them by the hour. The primary job duties of Named Aggrieved Employees and the Aggrieved Employees do not fall under any exemptions to the California Labor Code. At all relevant times, O'Reilly classified Named Aggrieved Employees and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code, the Business and Professions Code, and the Wage Order.

As hourly, non-exempt employees, Named Aggrieved Employees and the Aggrieved Employees were required to clock-in and clock-out at one of O'Reilly's timekeeping stations located inside the distribution center. However, prior to clocking in each day, Named Aggrieved Employees and the Aggrieved Employees were subjected to a health screening for Covid-19 and a metal detector screening and security inspection. For other

Aggrieved Employees, these Covid-19 and security screenings took place in the employee parking lot or in other areas that were located before the employees' clocked in and clocked out for payroll purposes. After clocking out each day, the Aggrieved Employees were subjected to an additional metal detector screening and security inspection.

O'Reilly implemented mandatory Covid-19 screenings for employees in in 2020 following the outbreak of the Coronavirus. The Covid-19 screening was imposed by O'Reilly as a requirement for work each shift. The examination was conducted on O'Reilly's premises, was required by O'Reilly, and was necessary for each employee to perform their work for O'Reilly.

After parking, Named Aggrieved Employees and the Aggrieved Employees were subjected to a Covid-19 screening at a designated area in the employee parking lot and, later, in the employee lounge area, both which anteceded access to the main distribution center area where employees conduct their work and where timekeeping stations were located. Other Aggrieved Employees were subjected to similar Covid-19 screenings and security inspections that occurred in other areas in O'Reilly's centers/locations before employees clocked in and after they clocked out of work.

The screening process involved a security guard or another employee of O'Reilly asking a series of questions related to the employee's potential exposure to the virus and present health symptoms. The screening process also entailed taking the employee's temperature. If the employee passed the examination, they were allowed to continue to the next screening, namely the security inspection, before they could officially clock in and commence getting paid for their work.

O'Reilly also required Aggrieved Employees to perform several tasks before they could clock in for payroll purposes. O'Reilly required Aggrieved Employees to scan their work badges to enter the parking lot, which often took several minutes when there were long lines or when the gate scanner malfunctioned and did not open after an employee scanned his or her badge. On such occasions, Aggrieved Employees had to wait several minutes for another employee to open the gate before they could enter the parking lot.

The amount of time that it took to undergo the Covid-19 screening ranged between two to five minutes on average. However, the total time spent in the screening process often exceeded five minutes due to the number of employees waiting in line to undergo the screening. Other Aggrieved Employees Covid-19 screening checks took longer, often ranging between five (5) minutes and ten (10) minutes each time. Further, for some Aggrieved Employees, after entering the parking lot and passing through the front door to the distribution centers, which took several minutes, Aggrieved Employees then had to stand in lines for several more minutes before they could clock in. O'Reilly did not allow

Aggrieved Employees to clock in more than three minutes early and Aggrieved Employees would be disciplined if they clocked in even a minute late. O'Reilly also required employees to be present on-time with all their equipment, such as RF guns and headsets, at their workstations for staff meetings and stretches at the start of their shifts. To avoid disciplinary action, including termination, Aggrieved Employees had to arrive minutes before their scheduled shifts to allow themselves enough time to go through the Covid-19 and security screenings and check out their required equipment before clocking in for their work shift.

These Covid-19 daily screenings and security checks should have been paid by O'Reilly because Aggrieved Employees were subjected to the control of O'Reilly, had no option of opting out of the health screenings, and were threatened with disciplinary action if they failed to comply with the screenings or if they failed to clock in and be present at their workstation immediately when then their shifts started the Aggrieved Employees were compelled to remain on O'Reilly's premises during the duration of the screenings and O'Reilly required them to perform a series of tasks as instructed by them, namely answering questions related to their health and submitting to their temperatures being taken. O'Reilly's control and restraint prevented the Aggrieved Employees from using this time for their own purposes. The Aggrieved Employees nonetheless completed this work while off the clock and without time added to their pay to compensate for the Covid-19 screening.

The security inspection prior to each shift, like the Covid-19 screening, was imposed by O'Reilly as a requirement for work. The inspection was conducted on O'Reilly's premises, was required by O'Reilly, and entailed significant control over employees' time. In addition to going through a security inspection before clocking in and after clocking out, other Aggrieved Employees were required to go through a security inspection each time they took a meal or rest period and each time they returned from a meal or rest period. When taking a meal or rest break, or before clocking in or after clocking out of work, Aggrieved Employees had to go through these security checks and retrieve their equipment and personal items from locker rooms before being allowed to enter or exit their work areas where they clocked in and out of work. Aggrieved Employees were compelled to remain on O'Reilly's premises during the duration of the inspection and were required to perform a series of tasks as instructed by O'Reilly, namely opening bags, removing any metals, walking through the metal detector, and collecting all belongings. O'Reilly's control and restraint prevented the Aggrieved Employees from using this time for their own purposes. For instance, the Aggrieved Employees could not use their cell phones or consume any food given that these items were prohibited from entering the distribution center.

The security screening was overseen by a security guard. On a typical morning, Named Aggrieved Employees and the Aggrieved Employees would walk up to the security

station, empty their pockets, remove any metals, open any bags, walk through the metal detector, collect all belongings, walk across the remaining twenty-five feet of the security area, enter the main distribution center area, and only then could they clock in. The clock-in station was located about ten to fifteen feet from the door.

The amount of time that it took to undergo the pre-shift security inspection ranged between three to five minutes on average. Again, other Aggrieved Employees had to go through these same security inspections during the workday, mainly during meal and rest periods to go to the locker room and retrieve or return their equipment and personal items before they could return to their work area. These security screenings often exceeded five minutes depending on the number of employees waiting in line to undergo the screening.

The amount of time that it took to undergo the post-shift security inspection was slightly longer and ranged between three to ten minutes on average. However, this time often exceeded ten minutes depending on the number of employees waiting in line to undergo the screening. The lengthier lines occurred most frequently post-shift when larger groups of employees ended their shift around the same time. The daily pre-shift and post-shift off-the-clock security inspections should have been paid by O'Reilly because Named Aggrieved Employees and the Aggrieved Employees were subjected to O'Reilly's control, could not opt out of the security inspections, and were threatened with disciplinary action if they failed to comply with the security inspections.

Given that each security inspection took about 5 minutes each time, the Aggrieved Employees were deprived of their mandatory 30-minute duty free meal periods and 10-minute duty free rest periods. Essentially, the Aggrieved Employees spent approximately 10 minutes of their 15-minute rest periods and 10 minutes of their 30-minute meal periods going through security inspections and retrieving their equipment from their lockers before being allowed to enter the work area.

In addition to the above, O'Reilly further had strict time efficiency requirements for the Named Aggrieved Employees and the Aggrieved Employees. O'Reilly used productivity scanners and certain software to monitor the Named Aggrieved Employees and the Aggrieved Employees' productivity which monitored the Named Aggrieved Employees and Aggrieved Employees at all times. O'Reilly's productivity requirements prevented and discouraged the Named Aggrieved Employees and Aggrieved Employees from taking restroom breaks and full rest and meal periods according to California laws. O'Reilly categorized the time the Named Aggrieved Employees and the Aggrieved Employees spent on breaks including reasonable travel time to and from the restrooms as unproductive in their monitoring system which was a violation of Labor Code §§ 2102 and 2103.

On workdays where Named Aggrieved Employees and the Aggrieved Employees already worked over eight hours and in workweeks where Named Aggrieved Employees and the Aggrieved Employees already worked forty hours, the foregoing off-the-clock work resulted in time which Named Aggrieved Employees and the Aggrieved Employees were not compensated at their overtime rate of pay.

O'Reilly failed to compensate the Aggrieved Employees for all meal period and rest period violations as a result of the mandatory security inspections. Because the Aggrieved Employees had to go through security inspections during meal and rest periods, which took about five (5) minutes each time, Aggrieved Employees were not paid all premium wages owed for those meal and rest period violations, were not paid all minimum wages owed for hours worked and were not paid all overtime wages owed for all overtime hours worked.

O'Reilly failed to compensate Named Aggrieved Employees and the Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. O'Reilly failed to compensate Named Aggrieved Employees and the Aggrieved Employees at the correct rates of pay for all hours worked over eight (8) in a day, over forty (40) in a week, and for the first eight (8) hours of the seventh day of the workweek. The unpaid activities above extended the workdays of Named Aggrieved Employees and the Aggrieved Employees in excess of eight (8) hours in a day and in excess of forty (40) hours in a week. However, O'Reilly did not compensate Named Aggrieved Employees and the Aggrieved Employees at overtime premium rates of pay for such work.

O'Reilly failed to compensate Named Aggrieved Employees and the Aggrieved Employees at the correct rates of pay for all hours worked over twelve (12) in a day, and all hours over the first eight (8) of the seventh day of the workweek. The unpaid activities above extended the workdays of Named Aggrieved Employees and the Aggrieved Employees in excess of twelve (12) hours in a day. However, O'Reilly did not compensate Named Aggrieved Employees and the Aggrieved Employees at double-time premium rates of pay for such work.

O'Reilly did not pay Aggrieved Employees all their overtime and doubletime wages, and the overtime that was paid, as well as PTO, to the extent there was any, at the correct rates of pay as O'Reilly incorrectly calculated the regular rate of pay for overtime and doubletime by failing to include all forms of pay, including, but not limited to non-discretionary bonuses and commissions, wage premiums or shift differential pay, when calculating their regular rates of pay for purposes of overtime and doubletime wages.

At all relevant times, O'Reilly failed to authorize and permit the Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. As explained above, O'Reilly also required the Aggrieved Employees to spend

time in security and Covid-19 procedures during their off-duty rest breaks. To enjoy the use of personal items such as food brought from home, mobile phones, and other electronic devices, O'Reilly required the Aggrieved Employees to undergo the security procedures during their off-duty rest breaks. O'Reilly failed to pay premium wages for days on which they failed to authorize and permit the Aggrieved Employees to take rest breaks as required by law.

At all relevant times, O'Reilly required the Aggrieved Employees to incur certain business expenses in the course of performing their duties. O'Reilly required the Aggrieved Employees to supply their own cellphones, latex gloves, masks, cleaning products, work gloves, steel toed work boots, and other protective gear such as work boots to perform their job duties. O'Reilly did not provide these items and did not reimburse the Aggrieved Employees for these items.

At all relevant times, O'Reilly failed to issue to Named Aggrieved Employees and the Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, total number of hours worked, and all gross and net wages earned during the pay period. O'Reilly knowingly and intentionally failed to state on the wage statements they issued to Named Aggrieved Employees and the Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all double-time wages earned, all meal period premium wages earned, and all rest break premium wages earned. Further, the wage statements provided to Named Aggrieved Employees and the Aggrieved Employees failed to state the correct total amount of hours worked during the pay period because the total amount of hours worked in the pay period indicated on the pay stubs was the sum of hours attributed to all types of wage payments even when the Aggrieved Employees were paid different types of wages for the same number of hours worked.

By failing to include all compensable time worked, O'Reilly also failed to timely pay Named Aggrieved Employees and the Aggrieved Employees all earned wages as described above during and at the conclusion of employment. By failing to include all compensable time worked, O'Reilly failed to maintain accurate employee records of Named Aggrieved Employees and the Aggrieved Employees.

At all relevant times during the applicable limitations period, O'Reilly failed to provide any toilet facilities for use by Named Aggrieved Employees and the Aggrieved Employees within reasonable access. O'Reilly also failed to provide lockers, closets, storage facilities, and changing rooms for use by Named Aggrieved Employees and the Aggrieved Employees. Moreover, O'Reilly failed to provide acceptable temperatures for the work areas they expected Named Aggrieved Employees and the Aggrieved Employees to perform their job duties in resulting in unsafe and unhealthy working conditions. Named

Aggrieved Employees and the Aggrieved Employees are informed and believed and based thereon allege that, at all relevant times, O'Reilly maintained a policy and/or practice, or lack thereof, which resulted in O'Reilly's failure to provide Named Aggrieved Employees and the Aggrieved Employees with toilet storage facilities, lockers, change rooms, and acceptable work temperatures.

For the reasons stated herein, Named Aggrieved Employees allege the following violations of the Labor Code and the Wage Order on behalf of themselves and all of the other Aggrieved Employees:

(a) O'Reilly failed to pay Named Aggrieved Employees 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) O'Reilly failed to provide the Aggrieved Employees all required meal periods in compliance with California law;

(c) O'Reilly failed to authorize and permit the Aggrieved Employees to take rest breaks in compliance with California law;

(d) O'Reilly failed to compensate the Aggrieved Employees at one hour's pay for each day in which O'Reilly failed to provide them with one or more meal periods as required by law;

(e) O'Reilly failed to compensate the Aggrieved Employees at one hour's pay for each day in which O'Reilly failed to authorize and permit them to take one or more rest breaks as required by law;

(f) O'Reilly failed to indemnify the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

(g) O'Reilly knowingly and intentionally failed to provide Named Aggrieved Employees and all of the other Aggrieved Employees with accurate wage statements;

(h) O'Reilly willfully failed to timely pay Named Aggrieved Employees and all of the other Aggrieved Employees all earned and unpaid wages during their employment with O'Reilly and when their employment ended;

(i) O'Reilly failed to provide the Aggrieved Employees with sufficient toilet and storage facilities, change rooms, and acceptable work temperatures;

(j) O'Reilly failed to maintain accurate employment records pertaining to Named Aggrieved Employees and all of the other Aggrieved Employees; and

(k) O'Reilly imposed unlawful quotas in violation of the Labor Code.

Accordingly, Named Aggrieved Employees now seek civil penalties on behalf of themselves and all of the other Aggrieved Employees based on O'Reilly's alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, O'Reilly, Named Aggrieved Employees, and all of the Aggrieved Employees were covered by the Wage Order because O'Reilly operated, and Named Aggrieved Employees, and all of the Aggrieved Employees worked for, one or more establishments operated as warehouses. Accordingly, Named Aggrieved Employees 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 §§ 223, 510, 1182.12, 1194, 1194.2, 1197, 1197.2 and 1198)

Labor Code § 223 makes it unlawful for employers to pay their employees wages lower than required by contract or statute while purporting to pay them legal wages. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

> (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
>
> (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
>
> (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
>
> (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

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

In relevant part, Labor Code § 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.

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

Labor Code § 1194.2 authorizes employees to recover liquidated damages for violations of Labor Code § 1194.2, where employees, like Named Aggrieved Employees and Aggrieved Employees are not paid for all hours worked, they may recover minimum wages and liquidated damages. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp.3d 891.)

Labor Code § 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.

Labor Code § 1197.1 entitles employees who are paid less the minimum wage fixed by state or local law, or by an order of the commission, to a civil penalty, restitution of wages, and liquidated damages: "(1) [f]or any initial violation that is intentionally committed, one hundred dollars ($100) for each unpaid employee for each pay period for which the employee is underpaid [and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

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 non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

As discussed above, at all relevant times during the applicable limitations period, O'Reilly failed to pay the Aggrieved Employees for all hours worked at the correct rates of pay. At all relevant times during the applicable limitations period, O'Reilly required Named Aggrieved Employees and the Aggrieved Employees to spend time in security and Covid-19 procedures before entering their work areas and clocking in for purposes of payroll, as well as after leaving their work areas and clocking out for purposes of payroll. O'Reilly did not pay Named Aggrieved Employees and the Aggrieved Employees for these activities. O'Reilly also required Named Aggrieved Employees and the Aggrieved Employees to spend time in security and Covid-19 procedures during their off-the-clock meal and rest periods. O'Reilly did not pay the Aggrieved Employees for time spent in these meal time or rest time activities nor pay for the entirety of the interrupted thirty-minute meal period and uninterrupted ten-minute rest periods, as time worked. The unpaid activities above extended the workdays of Named Aggrieved Employees and the Aggrieved Employees in excess of eight hours in a day and in excess of 40 hours in a week. However, O'Reilly

did not compensate Named Aggrieved Employees and the Aggrieved Employees at overtime premium rates of pay for such worktime. The unpaid activities above extended the workdays of the Aggrieved Employees in excess of 12 hours in a day. However, O'Reilly did not compensate the Aggrieved Employees at doubletime premium rates of pay for such worktime.

Moreover, O'Reilly did not pay Named Aggrieved Employees and the Aggrieved Employees all their overtime wages, and the overtime that was paid, as well as PTO, to the extent there was any, was short, as O'Reilly incorrectly calculated the regular rate of pay for overtime by failing to (1) include non-discretionary forms of pay in regular rate calculations and/or (2) factor in wage premiums or shift differential pay in regular rate calculations.

In sum, O'Reilly's actions alleged herein are violations of Labor Code §§ 223, 510, 1182.12, 1194, 1194.2, 1197, 1197.2 and 1198, and the Wage Order, among other provisions.

At all relevant times during the applicable limitations period, O'Reilly failed to compensate Named Aggrieved Employees and all of the other Aggrieved Employees for all hours worked, including without limitation minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Named Aggrieved Employees now seek civil penalties on behalf of themselves and all of the other Aggrieved Employees as follows:

1. $100 for each aggrieved employee for each initial violation of Labor Code § 223, and $200 for each aggrieved employee for each subsequent violation, plus 25 percent of the amount unlawfully withheld (penalties set by Labor Code § 225.5);

2. $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);

3. $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));

4. $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

5. $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(H) 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, O'Reilly failed to provide the other Aggrieved Employees with all required meal periods. O'Reilly denied the Aggrieved Employees their thirty-minute off-duty meal period within the first five hours of work. As explained above, O'Reilly also required the Aggrieved Employees to spend time in security and COVID-19 procedures during their off-the-clock meal periods. To enjoy the use of personal items such as food brought from home, mobile phones, and other electronic devices, O'Reilly required the Aggrieved Employees to undergo the security procedures during their off-the-clock meal periods. O'Reilly did not pay the Aggrieved Employees for time spent in these meal time activities nor pay for the entirety of the interrupted 30-minute meal period as time worked. Aggrieved Employees also suffered late, short, interrupted, and/or missed first and second meal periods, and on occasion, the job demands were such that they were prevented from having meal periods altogether. Furthermore, O'Reilly failed to pay premium wages for days on which they failed to provide the Aggrieved Employees with timely meal periods. Accordingly, Named Aggrieved Employees now seek civil penalties for these Labor Code violations that O'Reilly has committed against the 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(H) 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.

O'Reilly failed to authorize and permit the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. O'Reilly did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. As explained above, O'Reilly also required the Aggrieved Employees to spend time in security and COVID-19 procedures during their off-duty rest breaks. To enjoy the use of personal items such as food brought from home, mobile phones, and other electronic devices, O'Reilly required the Aggrieved Employees to undergo the security procedures during their off-duty rest breaks. O'Reilly did not pay the Aggrieved Employees for time spent in these rest break time activities. Aggrieved Employees also experienced short, untimely, and interrupted rest periods, and on occasion, the job demands were such that they were prevented from having rest periods altogether. Moreover, O'Reilly failed to pay the Aggrieved Employees premium wages on workdays O'Reilly failed to provide the Aggrieved Employees with ten-minute rest periods every four hours worked or major fraction thereof. Accordingly, Named Aggrieved Employees now seek civil penalties for these Labor Code violations that O'Reilly have committed against the Aggrieved Employees as follows:

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

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

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

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

Additionally, the Wage Order states,

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

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment

> shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) & (B).

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

At all relevant times, O'Reilly required Named Aggrieved Employees and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. During the applicable limitations period, O'Reilly required the Aggrieved Employees to supply cellphone, latex gloves, masks, cleaning products, work gloves, steel toed work boots, and other protective gear such as work boots. However, O'Reilly did not provide these items and did not reimburse the Aggrieved Employees for these items. Accordingly, Named Aggrieved Employees seek civil penalties for these Labor Code violations that O'Reilly have committed against the Aggrieved Employees as follows:

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

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

Failure to Provide Accurate Wage Statements
(Lab. Code §§ 218, 226)

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

1. Gross wages earned;

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

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.

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

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

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

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

D. The name of the employee and only the last four digits of his

or her social security number or an employee identification number other than a social security number; and

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

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

At all relevant times during the applicable limitations period, O'Reilly violated Labor Code section 226 because it 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. O'Reilly failed to state in the wage statements it issued to Named Aggrieved Employees and all of the other Aggrieved Employees all their hours worked and wages earned, including without limitation regular and overtime wages for work they performed off-the-clock after clocking out (as described above). O'Reilly knowingly and intentionally failed to state on the wage statements it issued to Named Aggrieved Employees and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, and all rest break premium wages earned.

In addition, O'Reilly failed to provide accurate wage statements to Aggrieved Employees who are paid a shift differential. Those employees wage statements do not state the correct amount of gross wages earned or the correct amount of net wages earned for acknowledged meal period violations because O'Reilly pays those employees premium wages for meal period violations at their base hourly rate of pay and not their regular rate of pay because the shift differential is higher than their base hourly rate of pay.

Moreover, O'Reilly's wage statements are inaccurate and in violation of Labor Code § 246 because their wage statements do not indicate the amount of paid sick leave available or the amount of paid time off available to be used in lieu of sick leave.

Accordingly, Named Aggrieved Employees seek civil penalties for the Labor Code violations that O'Reilly have committed against them 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). Additionally, pursuant to Labor Code §§ 218, 226(e), and 226(g), Named Aggrieved Employees and the Aggrieved Employees are entitled to recover the full amount of penalties due, in addition to reasonable attorneys' fees and costs of suit.

Failure to Timely Pay Wages During Employment
(Lab. Code §§ 204 and 210)

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.

O'Reilly failed to compensate Named Aggrieved Employees and the Aggrieved

Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, at the intervals stated above. As a result, O'Reilly failed to timely pay all earned wages due during employment within the time periods set by Labor Code § 204.

Due to O'Reilly's failure to pay Named Aggrieved Employees and the Aggrieved Employees all wages and premiums, O'Reilly also failed to timely pay them within 7 days of the close of the payroll period in accordance with Labor Code § 204 on a regular and consistent basis.

Accordingly, Named Aggrieved Employees now seek civil penalties for the Labor Code violations that O'Reilly have committed against them 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, 203, 210, 218.5, 218.6, 227.3, 3287, and 3289)

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

Labor Code § 202 provides that all earned and unpaid wages (including PTO and vacation pay) of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

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 thirty days.

Labor Code § 227.3 provides that if an employer provides PTO, that employer must then pay out at termination that portion of an employee's paid time off that is vested but unused.

O'Reilly failed to pay Named Aggrieved Employees and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above not later than the regular payday of the following calendar week, or by the

conclusion of their employment, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, and unprovided rest break premium wages. By failing to pay Named Aggrieved Employees and all of the other Aggrieved Employees as set forth above at the end of employment, O'Reilly is liable for violations of Labor Code §§ 201, 201.3, 202, and 203. Accordingly, on behalf of themselves and all of the other Aggrieved Employees, Named Aggrieved Employees seek civil penalties from O'Reilly 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 § 201.3, $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, willful, or intentional violations of § 202 occurred (penalties set by Labor Code § 210);

3. 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

4. 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)).

Pursuant to Labor Code §§ 218 and 218.5, Named Aggrieved Employees and the Aggrieved Employees are entitled to recover the full amount of their unpaid wages, penalty wages, reasonable attorneys' fees, and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a) and 3289, Named Aggrieved Employees and the Aggrieved Employees are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid penalty wages, as well as any statutory penalties O'Reilly may owe.

Failure to Provide Toilet and Storage Facilities, Lockers, Change Rooms, and Acceptable Work Temperatures
(Lab. Code §§ 1198, 2350, and 6404)

Labor Code § 2350 states,

> Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 13 of the Wage Order states,

> (A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.
>
> NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.
>
> (B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

Section 15(A) of the Wage Order states, "A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use."

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

Labor Code § 6404 prohibits an employer from maintaining a place of employment "that is not safe and healthful." The temperatures in O'Reilly's locations/centers frequently exceed the limit for a safe and healthful workplace. For example, the temperatures in

some of the Aggrieved Employees' locations/centers reached or exceeded 90 degrees.

Throughout the relevant time period, O'Reilly failed to provide sufficient toilet facilities for use by the Aggrieved Employees within reasonable access. Accordingly, on behalf of the Aggrieved Employees, Named Aggrieved Employees demand that O'Reilly cure the violations of Labor Code § 2350 and provide sufficient toilets to all Aggrieved Employees. O'Reilly also failed to provide lockers, closets, storage facilities, and changing rooms for use by the Aggrieved Employees. Moreover, O'Reilly failed to provide acceptable temperatures for the work areas it expected the Aggrieved Employees to perform their job duties in resulting in an unsafe and unhealthy workplace. Accordingly, Named Aggrieved Employees on behalf of the Aggrieved Employees seek all available civil penalties available under the labor code from O'Reilly including:

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

2. $100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5 & 1198)

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

> 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 the 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.

Named Aggrieved Employees and Aggrieved Employees have been denied their legal right and protected interest in having available at a central location at O'Reilly's facility/location/center where they are employed accurate and complete payroll records showing the hours worked daily by, and the wages paid to, Named Aggrieved Employees and the Aggrieved Employees at those respective locations pursuant to Labor Code § 1174. Under Labor Code § 1174.5, Named Aggrieved Employees and Aggrieved Employees may also recover civil penalties for violations of Labor Code § 1174(d).

As a result, O'Reilly has failed to accurately maintain all records required by section 1174 and the Wage Order, including without limitation Named Aggrieved Employees and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Named Aggrieved Employees seek civil penalties on behalf of themselves and all of the other Aggrieved Employees as follows:

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

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

Unlawful Quotas
(Lab. Code §§ 2102 and 2103)

Under Labor Code § 2012, warehouse and distribution center employees shall not be required to meet a quote that "prevents compliance with meal and rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards."

Under Labor Code § 2013(a), any action by an employee to "comply with occupational health and safety laws in the Labor Code or division standards shall be considered on task and productive time for purposes of any quota or monitoring system." Furthermore, "consistent with existing law, meal and rest breaks are not considered productive time unless the employee is required to remain on call." (*Id*. at (b).)

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O'Reilly has intentionally and willfully violated Labor Code §§ 2102 and 2103 as alleged above. As a result, Aggrieved Employees have suffered injury and damage to their statutorily protected rights. Accordingly, Named Aggrieved Employees seek civil penalties on behalf of themselves and all of the other Aggrieved Employees.

Conclusion

We respectfully request that the LWDA notify us as to whether it intends to investigate these alleged violations as soon as possible. We thank you for your attention to this matter. If you have any questions, please contact us.

Sincerely,

Alexandra K. Piazza

Alexandra K. Piazza

cc: **VIA CERTIFIED MAIL TO:**
O'Reilly Auto Enterprises, LLC
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EXHIBIT 4

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(Additional counsel on the following page)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, on behalf of themselves and all others similarly situated, and the general public and as an "aggrieved employee" on behalf of other similarly situated "aggrieved employees" under the Labor Code Private Attorney General Act of 2004,

Plaintiffs,

vs.

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company; EXPRESS SERVICES, INC., a Colorado corporation doing business as Express Employment Professionals; and DOES 2–50, inclusive,

Case No.: 3:21-cv-01120-AHG

CLASS ACTION

~~[PROPOSED]~~ FOURTH AMENDED COMPLAINT FOR:

1. Failure to Provide Meal Periods ;
2. Failure to Provide Rest Breaks;
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay;
4. Failure to Indemnify;
5. Wage Statement Penalties;
6. Waiting Time Penalties;
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (Lab Code §§2698, *et seq*.)

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Defendants.

JURY TRIAL DEMANDED

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**Pro hac vice* forthcoming.

Plaintiffs Jeffrey Pipich ("Plaintiff Pipich"), EVE STORM ("Plaintiff Storm"), Gary Cull ("Plaintiff Cull"), MELISSA KOLAKOWSKI ("Plaintiff Kolakowski"), and DANIEL LOPEZ ("Plaintiff Lopez") (hereafter collectively "Plaintiffs"), on behalf of themselves and all others similarly situated, the State of California, and other aggrieved employees, complain and allege as follows:

I. JURISDICTION AND VENUE

1. Defendants allege this Court has original subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.

2. Plaintiffs bring this class action based on alleged violations of the California Labor Code and Industrial Welfare Commission Order No. 9-2001 (hereafter "the Wage Order"), against Defendants O'REILLY AUTO ENTERPRISES, LLC ("O'Reilly"), a Delaware limited liability company, EXPRESS SERVICES, INC., a Colorado corporation, and DOES 1-50, inclusive ("Defendants").

3. Plaintiffs are citizens of California.

4. For purposes of diversity, a limited liability company (LLC) is a citizen of "every state of which its owners / members are citizens." *Johnson v. Columbia Properties Anchorage*, LP, 437 F.3d 894 (9th Cir. 2006). O'Reilly Auto Enterprises, LLC has only one owner / member which is Ozark Services, Inc.

5. A corporation is deemed to be a citizen of the states where it is incorporated and where its principal place of business is located. 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 130 S.Ct. 1181, 1186 (2010). Ozark Services, Inc. is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business located in Springfield, Missouri.

6. Where a statute authorizes an award of attorney fees, the fees are part of the amount in controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155–56 (9th Cir. 1998). Plaintiff's individual damages, including attorneys' fees exceed

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$75,000.

7. As set forth in more detail below, Plaintiffs allege that Defendants are liable to them and other similarly situated workers for unpaid wages, statutory penalties, interest, and related relief. These claims are based on Defendants' failures to: (1) Provide all rest and meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned for all hours worked at the correct rates of pay; and (4) Provide complete and accurate wage statements.

8. Venue is proper in the Southern District of California because O'Reilly is subject to personal jurisdiction in this District.

9. O'Reilly is subject to personal jurisdiction before this Court because it has purposefully availed itself of the privileges of conducting activities throughout the State of California and established minimum contacts sufficient to confer jurisdiction. O'Reilly transacts business in California, advertises in California, and markets to California consumers. The violations of the law forming the basis of this lawsuit occurred in California. Further, O'Reilly employs California residents. Therefore, the assumption of jurisdiction over O'Reilly will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process. O'Reilly also had and continues to have continuous and systematic contacts with the State of California sufficient to establish general jurisdiction over it.

II. THE PARTIES AND INTRODUCTION

10. Plaintiffs are residents of California.

11. Defendant EXPRESS SERVICES, INC., dba Express Employment Professionals, is a corporation organized and existing under the laws of Colorado and a citizen of California based on Plaintiff's information and belief.

12. Defendant O'REILLY AUTO ENTERPRISES, LLC is a limited

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liability company organized and existing under the laws of Delaware and a citizen of California based on Plaintiffs' information and belief.

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

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

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

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

17. Defendants own and operate a line of automotive retailers that specialize in providing aftermarket parts and accessories to both consumers and

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businesses. Defendants rely on a robust network of distribution centers strategically located across the United States to ensure timely product availability and optimal inventory levels throughout their stores. Defendants employ thousands of individuals at distribution centers throughout the state of California and the United States to support the flow of their automobile products into stores nationwide. The manual tasks that these employees perform include, without limitation, storing inventory, reviewing and selecting orders, pulling specific parts according to retailers' needs, packing orders, and loading and delivering orders.

18. This case is about Defendants' failure to provide proper payment of all wages, including regular and overtime and doubletime wages and to otherwise comply with state labor laws. These claims are based on Defendants' failures to: (1) Provide all rest and meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned for all hours worked at the correct rates of pay; (4) Issue accurate and complete itemized wage statements; (5) Timely pay wages during and upon termination of employment and; (6) Provide toilet and storage facilities, lockers, change rooms, and acceptable work temperatures, (7) Maintain accurate employment records; (8) Comply with the Business and Professions Code; and (9) Comply with other Labor Code requirements that prohibit employee quotas in certain circumstances.

19. The Judicial Council of California's amended Emergency Rule 9 (effective May 29, 2020) provides that "[n]otwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020." The Advisory Committee Comment notes that "Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action. The term 'civil causes of action' includes special proceedings. (See Code Civ. Proc., §§ 312, 363 ['action,' as used in title 2 of the code (Of the Time of

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Commencing Civil Actions), is construed 'as including a special proceeding of a civil nature' . . . .) The rule also applies to statutes of limitations on filing causes of action in court found in codes other than the Code of Civil Procedure . . . ." Accordingly, the relevant time period of claims discussed herein is three years prior to the date Plaintiffs filed this action, plus the additional time during which the statute of limitations was tolled (pursuant to Emergency Rule 9 of the California Rules of Court) and ongoing.

III. CLASS ALLEGATIONS

20. This action has been brought and may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"). Class members are similarly situated persons and there are common questions of law and fact that predominate over any questions that solely affect individual class members. Class treatment is also superior to all other methods for fairly and efficiently adjudicating this controversy because it will allow a large number of similarly situated persons to both simultaneously and efficiently prosecute their common claims in a single forum without the needless duplication of effort and expense that numerous individual actions would entail. Further, Plaintiffs are not aware of any difficulties that are likely to be encountered in the management of this action that would preclude class treatment.

21. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California, either directly or indirectly through staffing agencies, as hourly, non-exempt employees, including, but not limited to, pickers, drivers, warehouse workers, material handlers, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, who worked at an O'Reilly distribution center any time during the period beginning July 5, 2018 and ending on the date that final judgment is entered in this action ("Class" or "Class Members").

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

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

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

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

B. Whether Defendants failed to pay all wages earned at the correct rates of pay;

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 failed to maintain complete and accurate

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employee records, including payroll records;

I. Whether Defendants failed to provide the required facilities, including a safe work environment;

J. Whether Defendants violated Labor Code section 2102 by preventing Class Members from exercising their statutory rights to meal and rest breaks, or complying with health and safety standards, through the imposition of quotas;

K. Whether Defendants utilized quotas or monitoring systems that considered time spent on rest or meal breaks, or actions taken to comply with occupational health and safety laws as unproductive time in violation of Labor Code section 2103;

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

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

25. **Typicality:** Plaintiffs' claims are typical of the other Class Members' claims. Plaintiffs are informed and believe and thereon allege 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.

26. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives in that they have no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiffs will fairly and adequately represent and protect the interests of Class Members.

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

28. **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. FACTUAL ALLEGATIONS

29. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

30. Plaintiff Pipich worked for Defendants as a City Counter Route Driver and warehouse employee from approximately July 2015 to February 2021. Plaintiff Pipich worked for at Defendants' Distribution Center Number 25 in Moreno Valley, California. Plaintiff Pipich was a non-exempt employee and was compensated on an hourly basis.

31. Plaintiff Storm began working for Defendants on approximately October 19, 2020 at the O'Reilly Auto Parts Distribution Center Moreno Valley,

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Riverside County in the non-exempt, hourly position of picker. Defendants continuously employed her in that capacity until on or about January 7, 2021 when her employment ended.

32. On approximately December 4, 2018, Defendants began to employ Plaintiff Cull at the O'Reilly Auto Parts Distribution Center Moreno Valley, Riverside County in the non-exempt, hourly position of outbound material handler. From that date, Defendants continuously employed him in that capacity until on or about September 20, 2019 when his employment ended.

33. From approximately October 29, 2019 to January 27, 2022, Defendants employed Plaintiff Kolakowski at the O'Reilly Auto Parts Distribution Center Stockton, San Joaquin County in the non-exempt, hourly positions of material handler and custodian.

34. From approximately June of 2017 to March of 2020 and from June 2022 to October of 2023, Defendants employed Plaintiff Lopez at the O'Reilly Auto Parts Distribution Center Moreno Valley, Riverside County in the non-exempt, hourly positions of material handler and maintenance specialist.

35. Defendants specialize in offering aftermarket automobile parts to professional and amateur consumers at their stores. Defendants operationalize their value proposition of offering excellent customer service to consumers in part through the support of a strategic network of distribution centers that channel inventory into Defendants' stores. Indeed, Defendants' business model is designed so that timely product availability and optimal inventory levels are achieved via this network of distribution centers, which provide five-nights-a-week delivery to substantially all stores.

36. At all relevant times, Defendants issued wages to Plaintiffs and all of the other Class Members on a weekly and/or bi-weekly basis and paid them by the hour. At all relevant times, Defendants classified Plaintiffs and all of the other Class

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Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

37. As hourly, non-exempt employees, Plaintiffs were required to clock-in and clock-out at one of Defendants' timekeeping stations located inside the distribution center. However, prior to clocking in each day, Defendants subjected Plaintiffs to a health screening for Covid-19, a metal detector screening, and a security inspection. After clocking out each day, Defendants subjected Plaintiffs to an additional metal detector screening and security inspection.

38. Defendants implemented the Covid-19 screening in 2020 following the outbreak of the Coronavirus.

39. Defendants imposed the Covid-19 screening as a requirement for work each shift. The examination was conducted on Defendants' premises, was required by Defendants, and was necessary for each employee to perform their work for Defendants.

40. Defendants failed to compensate Plaintiffs and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Defendants required Plaintiffs and Class Members to perform several tasks before they could clock in for payroll purposes. Defendants required Plaintiffs and Class Members to scan their work badges to enter the parking lot. This process often took several minutes when several people were scheduled for the same shift and/or when the gate scanner malfunctioned and did not open after an employee scanned his or her badge. On such occasions, the employees had to wait several minutes for another employee to open the gate before they could enter the parking lot.

41. For a period of time, Defendants also required Plaintiffs and the Class Members to spend time in COVID19 screening procedures before entering their work areas. Plaintiffs and Class Members were subject to a Covid-19 screening at a designated area in the employee parking lot and, later, in the employee lounge

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area, both which anteceded access to the main distribution center area where employees conduct their work and where timekeeping stations were located. The screening process involved a security guard or another employee of Defendants asking a series of questions related to the employee's potential exposure to the virus and present health symptoms. The screening process also entailed taking the employee's temperature. If the employee passed the examination, s/he was allowed to continue to the next screening, namely the security inspection, before s/he could officially clock in and commence getting paid for their work.

42. The amount of time that it took to undergo the Covid-19 screening ranged between two to five minutes on average. However, the total time spent in the screening process often exceeded five minutes due to the number of employees waiting in line to undergo the screening.

43. This Covid-19 daily screening should have been paid by Defendants because Plaintiffs and the Class Members were subject to Defendants' control, had no option of opting out of the health screening, and were threatened with disciplinary action if they failed to comply with the screening. Plaintiffs and the Class Members, specifically, were compelled to remain on Defendants' premises during the duration of the screening and perform a series of tasks as instructed by Defendants, namely answering questions related to their health and submitting to their temperatures being taken. Defendants' control and restraint prevented Plaintiffs and the Class Members from using this time for their own purposes.

44. Plaintiffs and the Class Members nonetheless completed this work while off the clock and without time added to their pay to compensate for the Covid-19 screening.

45. Defendants further required Plaintiffs and the Class Members to spend time in security check procedures before entering their work areas and before they could clock in for purposes of payroll.

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46. The security inspection prior to each shift, like the Covid-19 screening, was imposed by Defendants as a requirement for work. The inspection was conducted on Defendants' premises, was required by Defendants, and entailed significant control over employees' time.

47. Plaintiffs and the Class Members underwent the security screening in tandem with and after undergoing the Covid-19 screening, but prior to clocking in for work, at the start of each workday. Indeed, the security screening took place inside the employee lounge, which was outside the main distribution center area where employees accessed timekeeping stations to clock in.

48. The security screening was overseen by a security guard. On a typical morning, Plaintiffs and the Class Members would walk up to the security station, empty their pockets, remove any metals, open any bags, walk through the metal detector, collect all belongings, walk across the remaining twenty-five feet of the security area, enter the main distribution center area, and only then would they clock in. The clock-in station was located about ten to fifteen feet from the door.

49. The amount of time that it took to undergo the pre-shift security inspection ranged between three to five minutes on average. However, this time often exceeded five minutes depending on the number of employees waiting in line to undergo the screening.

50. After passing through security checks, Plaintiffs and Class Members had to stand in lines for several minutes before they could clock in for payroll purposes. Defendants did not allow Plaintiffs and Class Members to clock in more than three (3) minutes before their scheduled start time. Defendants disciplined the Class Members if they clocked in even one minute past their scheduled start time and if they were not present on-time with all their equipment, such as RF guns and headsets, at their works stations for staff meetings and stretches at the start of their shifts. As such, to avoid disciplinary actions, including and up to termination,

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Plaintiffs and Class Members had no choice but to arrive minutes before their scheduled start time to allow themselves enough time to go through the COVID19 and security check process and clock-in, pick up and sign up for their equipment, and be present at their work stations at the start of their shifts for daily meetings and stretches. Defendants did not pay Plaintiffs and the Class Members for these off-the-clock activities. Defendants also required Plaintiffs and the Class Members to spend time in security check procedures during their off-the-clock meal periods. Defendants did not pay Plaintiffs and the Class Members for time spent in these meal time activities nor pay for the entirety of the interrupted 30-minute meal period as time worked.

51. Moreover, Plaintiffs and the Class Members were subject to the same security inspection upon clocking out for the day and before leaving Defendants' premises.

52. The amount of time that it took to undergo the post-shift security inspection was slightly longer and ranged between three to ten minutes on average. However, this time often exceeded ten minutes depending on the number of employees waiting in line to undergo the screening. Plaintiffs and the Class Members noticed that lengthier lines occurred most frequently post-shift when larger groups of employees ended their shift around the same time.

53. The daily pre-shift and post-shift off-the-clock security inspections should have been paid by Defendants because Plaintiffs and the Class Members were subject to Defendants' control, could not opt out of the security inspections, and were threatened with disciplinary action if they failed to comply with the security inspections. Plaintiffs and the Class Members, specifically, were compelled to remain on Defendants' premises during the duration of the inspection and perform a series of tasks as instructed by Defendants, namely opening bags, removing any metals, walking through the metal detector, and collecting all

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belongings. Defendants' control and restraint prevented Plaintiffs and the Class Members from using this time for their own purposes. For instance, Plaintiffs and the Class Members could not use their cell phones or consume any food given that these items were prohibited from entering the distribution center.

54. The primary job duties of Plaintiffs and the Class Members do not fall under any exemptions to the California Labor Code.

55. Defendants failed to compensate Plaintiffs and all of the other Class Members at the correct rates of pay for all hours worked over eight (8) in a day, over forty (40) in a week, and for the first eight (8) hours of the seventh day of the workweek. The unpaid activities described above extended the workdays of Plaintiffs and the Class Members in excess of eight hours in a day and in excess of forty (40) hours in a week. However, Defendants did not compensate Plaintiffs and the Class Members at overtime premium rates of pay for all overtime hours worked.

56. Defendants failed to compensate Plaintiffs and all of the other Class Members at the correct rates of pay for all hours worked over twelve (12) in a day, and all over the first eight (8) of the seventh day of the workweek. The unpaid activities described above extended the workdays of Plaintiffs and the Class Members in excess of twelve (12) hours in a day. However, Defendants did not compensate Plaintiffs and the Class Members at doubletime premium rates of pay for such work.

57. Moreover, Defendants did not pay Class Members all their overtime and doubletime wages, and the overtime that was paid, as well as PTO, to the extent there was any, at the correct rates of pay as Defendants incorrectly calculated the regular rate of pay for overtime and doubletime by failing to include all forms of pay, including, but not limited to non-discretionary bonuses and commissions, wage premiums or shift differential pay, when calculating their regular rates of pay for purposes of overtime and doubletime wages.

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58. At all relevant times, Defendants failed to provide Plaintiffs and all of the other Class Members with all timely 30-minute, off-duty meal periods. As explained above, Defendants required Plaintiffs and the Class Members to spend time in security check procedures and during their off-the-clock meal periods. Defendants prohibited Plaintiffs and the Class Members from taking their personal items such as food brought from home, mobile phones, and other electronic devices into their work areas. To enjoy the use of such personal items during their meal periods or rest breaks, Defendants required Plaintiffs and the Class Members to undergo the security check procedures during their off-the-clock meal periods. Defendants did not pay Plaintiffs and the Class Members for time spent in these meal time activities nor pay for the entirety of the interrupted 30-minute meal period as time worked. Defendants also failed to pay premium wages for days on which they failed to provide Plaintiffs and all of the other Class Members with meal periods as required by law.

59. At all relevant times, Defendants failed to authorize and permit Plaintiffs and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. As explained above, Defendants also required Plaintiffs and the Class Members to spend time in security check procedures during their off-duty rest breaks. To enjoy the use of personal items such as food brought from home, mobile phones, and other electronic devices, Defendants required Plaintiffs and the Class Members to undergo the security check procedures during their off-duty rest breaks. Defendants did not pay Plaintiffs and the Class Members for time spent in these rest break time activities. Defendants also failed to pay premium wages for days on which they failed to authorize and permit Plaintiffs and all of the other Class Members to take rest breaks as required by law

60. Defendants further had strict time efficiency requirements for Plaintiffs and the Class Members. Defendants used productivity scanners and

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certain software to monitor Plaintiffs and the Class Members' productivity which monitored Plaintiffs and the Class Members at all times. Defendants' productivity requirements prevented and discouraged Plaintiffs and the Class Members from taking restroom breaks and full rest and meal periods according to California laws. Defendants categorized the time Plaintiffs and the Class Members spent on breaks including reasonable travel time to and from the restrooms as unproductive in their monitoring system which was a violation of Labor Code §§ 2102 and 2103.

61. At all relevant times, Defendants required Plaintiffs and all of the other Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiffs and all of the other Class Members to supply latex gloves, masks, cleaning products, work gloves, steel toed work boots, and other protective gear such as work boots to perform their job duties. Defendants also required Plaintiffs and all of the other Class Members to use their personal cellphones for work purposes. However, Defendants did not provide these items and did not reimburse Plaintiffs and the other Class Members for these items.

62. Further, the wage statements Defendants provided to Plaintiffs and the Class Members failed to state the correct total number of hours worked during each pay period when they were paid different rates of pay for the same number of hours worked. The wage statements Defendants issued to Plaintiffs and the Class Members also failed to indicate the amount of paid sick leave or the amount of paid time off available to be used in lieu of sick leave.

63. At all relevant times during the applicable limitations period, Defendants failed to provide sufficient toilet facilities for use by Plaintiffs and the Class Members within reasonable access. Defendants also failed to provide sufficient lockers, closets, storage facilities, and changing rooms for use by Plaintiffs and the Class Members. Moreover, Defendants failed to provide acceptable temperatures for the work areas they expected Plaintiffs and the Class

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Members to perform their job duties in resulting in unsafe and unhealthy working conditions.

64. For the reasons stated herein, Plaintiffs allege that as a result of Defendants' unlawful practice and policies, Plaintiffs and the Class Members were:

A. Not provided with all off duty meal periods;

B. Not provided with all rest break periods as required by law;

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

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

E. Not paid all wages earned, including, but not limited to, regular and overtime wages at the correct rates of pay including the work performed while clocked out;

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

G. Not provided with complete and correct itemized wage statements;

H. Not paid all earned and unpaid wages during their employment and when their employment ended;

I. Not provided with sufficient toilet and storage facilities, change rooms, and acceptable work temperatures; and

J. subject to unlawful quotas in violation of the Labor code.

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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7, 512, 1198

(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

65. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

67. 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.

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

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

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

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69. In relevant part, Section 10 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.

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70. 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.

71. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs 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 and the Wage Order, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

72. As discussed above, Defendants intentionally failed to provide Plaintiffs and the Class Members with all required 30-minute duty free meal periods.

73. Plaintiffs are informed and believe and thereon allege 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 Plaintiffs and the Class Members with all off-duty meal periods and rest breaks required by California law. Class Members also suffered late, short, interrupted, and/or missed

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first and second meal periods, and on occasion, the job demands were such that they were prevented from having meal periods altogether.

74. Plaintiffs are informed and believe and thereon allege 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 Class Members with all off-duty meal periods required by California law.

75. As a result of Defendants' unlawful conduct, Plaintiffs 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.

76. By reason of the above, Plaintiffs 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.

SECOND CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7 and 1198

(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

77. Plaintiffs incorporate all paragraphs of this complaint as if fully alleged herein.

78. At all relevant times during the applicable limitations period, Plaintiffs 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.

79. 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

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of labor prohibited by the order is unlawful.

80. In relevant part, Section 11 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 1/2) 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 work day that the rest period is not provided."

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

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

83. As explained above, at all relevant times, Defendants failed to authorize and permit Plaintiffs and all of the other Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Class Members also experienced short, untimely, and interrupted rest

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periods, and on occasion, the job demands were such that they were prevented from having rest periods altogether. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement.

84. Plaintiffs are informed and believe and thereon allege that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not authorizing and permitting Plaintiffs and the Class Members to take all rest breaks required by California law.

85. Defendants failed to provide Plaintiffs with all required rest breaks in accordance with the Wage Order. Plaintiffs are informed and believe and thereon allege that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with all rest breaks required by California law.

86. Defendants failed to pay Plaintiffs the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to them. Plaintiffs are informed and believe and thereon allege that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

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

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

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THIRD CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED AT THE CORRECT RATES OF PAY

Lab. Code §§ 223, 510, 1194, 1197, and 1198

(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

89. Plaintiffs incorporate all paragraphs of this complaint as if fully alleged herein.

90. At all relevant times during the applicable limitations period, Plaintiffs and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code and the Wage Order.

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

92. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

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

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> 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 (7^{th}) consecutive day of work in a workweek.
>
> (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

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

94. Labor Code section 510 states:

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

95. 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.

96. Labor Code § 1194.2 authorizes employees to recover liquidated

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damages for violations of Labor Code § 1194.2, where an employee is not paid for all hours worked, they may recover minimum wages and liquidated damages. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp.3d 891.)

97. 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.

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

99. Labor Code § 223 makes it unlawful for employers to pay their employees wages lower than required by contract or statute while purporting to pay them legal wages. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

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

101. As discussed above, at all relevant times during the applicable limitations period, Defendants required Plaintiffs and the Class Members to work off-the-clock without compensation. Further, the unpaid activities explained above extended the workdays of Plaintiffs and the Class Members in excess of eight hours in a day and in excess of 40 hours in a week. However, Defendants did not compensate Plaintiffs and the Class Members at overtime premium rates of pay for all overtime hours worked. The unpaid activities explained above also extended the

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workdays of Plaintiffs and the Class Members in excess of 12 hours in a day. However, Defendants did not compensate Plaintiffs and the Class Members at doubletime premium rates of pay for all doubletime hours worked.

102. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiffs and the other Class Members for all hours worked as required by California law.

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

104. Pursuant to Labor Code section 1194, Plaintiffs, on behalf of themselves and Class Members, seek to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

105. Additionally, with respect to this cause of action, on behalf of themselves and the class, Plaintiffs pray for an award of reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 1198 and 2802

(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

106. Plaintiffs incorporates all paragraphs of this complaint as if fully alleged herein.

107. At all relevant times during the applicable limitations period, Plaintiffs and the Class Members have been employees of Defendants and entitled to the

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benefits and protections of California Labor Code and the Wage Order.

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

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

110. At all relevant times, Defendants required Plaintiffs and the Class Members to incur certain business expenses in the course of performing their duties. During the applicable limitations period, Defendants required Plaintiffs and all of the other Class Members to supply latex gloves, masks, cleaning products, work gloves, steel toed work boots, and other protective gear to perform their job duties. Defendants also required Plaintiffs and all of the other Class Members to use their personal cellphones for work purposes. However, Defendants did not provide these items and did not reimburse Plaintiffs and the other Class Members for these items.

111. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiffs and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

112. By reason of the above, Plaintiffs and the members of the class are entitled to reimbursement for all necessary expenditures and losses and interest due and owing to them within four years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to California Labor Code section 2802(b). Further, Plaintiffs, on behalf of themselves and the class, pray for reasonable attorney's fees pursuant to Labor Code section 2802(c).

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113. Additionally, with respect to this cause of action, on behalf of themselves and the class, Plaintiffs pray for an award of reasonable attorney fees and costs, including interest thereon, as permitted by law, all in amounts subject to proof.

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

114. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

A. Gross wages earned;

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

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

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

E. Net wages earned;

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

G. 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

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

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

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

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

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

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

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

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

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

117. "Promptly and easily determine," as stated in California Labor Code

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§ 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

118. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiffs and the other Class Members all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). Defendants knowingly and intentionally did not issue wage statements to Plaintiffs and the Class Members that state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related information.

119. In addition, Defendants failed to provide accurate wage statements to Class Members who are paid a shift differential. Those employees wage statements do not state the correct amount of gross wages earned or the correct amount of net wages earned for acknowledged meal period violations because Defendants pay those employees premium wages for meal period violations at their base hourly rate of pay and not their regular rate of pay because the shift differential is higher than their base hourly rate of pay.

120. Moreover, Defendants wage statements are inaccurate and in violation of Labor Code § 246 because their wage statements do not indicate the amount of paid sick leave available or the amount of paid time off available to be used in lieu of sick leave. Further, the wage statements provided to Plaintiff and the Class Members failed to state the correct total amount of hours worked during the pay

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period because the total amount of hours worked in the pay period indicated on the pay stubs was the sum of hours attributed to all types of wage payments even when the Class Members were paid different types of wages for the same number of hours worked.

121. Plaintiffs and the Class Members are informed and believed and based thereon allege that Defendants had a policy or practice of failing to pay employees wages owed for: unacknowledged meal period violations; premium wages for rest period violations; minimum or overtime wages for compensable meal period time; and minimum or overtime wages owed for time spent going through security checks and going to the locker room to return or retrieve equipment before clocking in for work or after clocking out for work. As a result, Defendants had a policy or practice of providing employees wage statements in violation of Labor Code § 226(a).

122. Defendants' failure to provide Plaintiffs and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

123. As a result of being provided with inaccurate wage statements by Defendants, Plaintiffs and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiffs and the other Class Members were not able

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to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(Lab. Code §§ 201, 202, and 203)

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

124. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

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

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

128. Labor Code § 227.3 provides that if an employer provides PTO, that employer must then pay out at termination that portion of an employee's paid time off that is vested but unused.

129. By failing to pay earned minimum, overtime, and premium wages to Plaintiffs and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

130. Plaintiffs are informed and believes that Defendants' failures to timely

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pay Plaintiffs and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

132. Plaintiffs incorporates all paragraphs of this Complaint as if fully alleged herein.

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

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

135. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and the Class Members have suffered injuries in fact and lost money or property. Plaintiffs and the Class Members were deprived of money for work related expenses, minimum wages, regular wages, overtime wages, doubletime wages,

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missed rest period premium wages, missed meal period premium wages, and comparable money and property.

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

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

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab Code §§2698, *et seq.*)

(By Plaintiff and the Aggrieved Employees against all Defendants)

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

139. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning May 11, 2020 and ending on the date that final judgment is entered in this action.

140. California Labor Code §§ 2698 *et seq.* grant California employees the right to bring a civil action for violation of any provision of the Labor Code on behalf of themselves and other current or former employees to recover civil penalties. In passing PAGA, the California Legislature

> "declared that adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies had declined and were unlikely to keep pace with future growth of the labor market, and that it was therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to

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recover civil penalties for Labor Code violations."

Arias v. Super. Ct., 46 Cal. 4th 969, 980 (2009).

141. PAGA permits aggrieved employees to collect the civil penalties authorized by law and normally collectible by the Labor and Workforce Development Agency ("LWDA") or any of its departments or divisions. *See* Cal. Lab. Code § 2699(a). However, because the action is brought on behalf of the state, 75% of the fees collected are distributed to the LWDA for the enforcement of labor laws and for the education of employers and employees. The remaining 25% is shared between the aggrieved employees. *See* Cal. Lab. Code § 2699(i).

142. PAGA provides that any civil penalty assessed and collected by the LWDA for violations of applicable provisions of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code § 2699.3.

143. Pursuant to Labor Code § 2699.3(a)(1)(A), before commencing a civil action, an aggrieved employee must first give notice by online filing with the LWDA and by certified mail to the employer of the alleged violations, including the facts and theories supporting the allegations. If the LWDA fails to investigate the alleged violations within sixty-five calendar days of the date of the notice, then the aggrieved employee may file a civil action to seek penalties.

144. 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

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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.

145. 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.

146. Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of

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separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

147. Section 13 of the Wage Order states,

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

148. Section 15(A) of the Wage Order states, "A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use."

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

150. Labor Code § 1197.1 entitles employees who are paid less the minimum wage fixed by state or local law, or by an order of the commission, to a civil penalty, restitution of wages, and liquidated damages: "(1) [f]or any initial violation that is intentionally committed, one hundred dollars ($100) for each unpaid employee for each pay period for which the employee is underpaid [and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty

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dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

151. Labor Code § 6404 prohibits an employer from maintaining a place of employment "that is not safe and healthful." The temperatures in O'Reilly's locations/centers frequently exceed the limit for a safe and healthful workplace. For example, the temperatures in some of the Aggrieved Employees' locations/centers reached or exceeded 90 degrees.

152. Labor Code section 1174, which also pertains to recordkeeping, states in relevant part:

> 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.

153. 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

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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).

154. Section 7 of the Wage Order states,

1. Every employer shall keep accurate information with respect to each employee including the following:
2. Full name, home address, occupation and social security number.
3. Birth date, if under 18 years, and designation as a minor.
4. 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.
5. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
6. 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.
7. 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.

155. Under Labor Code § 2102, warehouse and distribution center employees shall not be required to meet a quote that "prevents compliance with meal and rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards."

156. Under Labor Code § 2103(a), any action by an employee to "comply with occupational health and safety laws in the Labor Code or division standards shall be considered on task and productive time for purposes of any quota or

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monitoring system." Furthermore, "consistent with existing law, meal and rest breaks are not considered productive time unless the employee is required to remain on call." (*Id*. at (b).)

157. During the applicable time period, Defendants violated California Labor Code §§ 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2102, 2103, 2350, 2802, and 6404.

158. 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.

159. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2102, 2103, 2350, 2802, and 6404 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars ($100.00) for each Aggrieved Employee for each initial violation and two hundred dollars ($200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 223, 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 § 225.5).

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C. For violations of California Labor Code § 226(a), two hundred fifty dollars ($250.00) for each Aggrieved Employee for initial violation and one thousand dollars ($1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

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

E. For violations of California Labor Code § 1174, five hundred dollars ($500.00) for each Aggrieved Employee for each initial violation (penalty amounts established by Labor Code § 1174.5).

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

G. For violations of California Labor Code §§ 201, 201.3, 202, 203, 226.7, 1194, 1198, 2102, 2103, 2802, and 2350, one hundred dollars ($100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars ($200.00) for each Aggrieved Employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

160. On May 11, 2021, Plaintiff Pipich provided written notice of the alleged violations, including the facts and theories supporting his allegations, to the LWDA via online submission, with a certified copy mailed to Defendants. More than sixty-five calendar days have passed since the date notice was provided to the Labor and Workforce Development Agency ("LWDA") and Defendants.

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Accordingly, Plaintiff Pipich has satisfied the administrative prerequisites under California Labor Code § 2699.3(a) to recover civil penalties against Defendants for violations of the Labor Code and the Wage Order.

161. On January 4, 2022, Plaintiff Pipich provided supplemental written notice of further alleged violations, including the facts and theories supporting his allegations, to the LWDA via amended online submission, with a certified copy mailed to Defendants. More than sixty-five calendar days have passed since the date the supplemental notice was provided to the LWDA and Defendants. Accordingly, Plaintiff Pipich has satisfied the administrative prerequisites under California Labor Code § 2699.3(a) to recover civil penalties against Defendants for violations of the Labor Code and the Wage Order.

162. By letter dated August 11, 2021, Plaintiff Storm gave written notice by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. On January 5, 2022, Plaintiff Storm sent a supplemental written notice by certified mail to the LWDA.

163. On May 16, 2024, pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave additional written notice to Defendants and the LWDA of Defendants' violations of the Labor Code.

164. Pursuant to California Labor Code § 2699(g), Plaintiffs and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

165. WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members, pray for relief and judgment against Defendants as follows:

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

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B. An order that Plaintiffs be appointed class representatives;

C. An order that counsel for Plaintiffs be appointed class counsel;

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

E. Liquidated damages;

F. Expense reimbursement;

G. Restitution;

H. Declaratory relief;

I. Actual damages;

J. Statutory penalties, including waiting time penalties;

K. Civil penalties;

L. Pre-judgment interest;

M. Costs of suit;

N. Reasonable attorneys' fees; and

O. Such other relief as the Court deems just and proper

VII. DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all other Class Members, hereby demand a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 20, 2024

By: /s/ David Spivak
DAVID SPIVAK
CAROLINE TAHMASSIAN
Attorneys for Plaintiffs and all others similarly situated

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EXHIBIT 5

Raosoft®

Sample size calculator

What margin of error can you accept? 5% is a common choice	32 %	The margin of error is the amount of error that you can tolerate. If 90% of respondents answer *yes*, while 10% answer *no*, you may be able to tolerate a larger amount of error than if the respondents are split 50-50 or 45-55. Lower margin of error requires a larger sample size.
What confidence level do you need? Typical choices are 90%, 95%, or 99%	95 %	The confidence level is the amount of uncertainty you can tolerate. Suppose that you have 20 yes-no questions in your survey. With a confidence level of 95%, you would expect that for one of the questions (1 in 20), the percentage of people who answer *yes* would be more than the margin of error away from the true answer. The true answer is the percentage you would get if you exhaustively interviewed everyone. Higher confidence level requires a larger sample size.
What is the population size? If you don't know, use 20000	1767	How many people are there to choose your random sample from? The sample size doesn't change much for populations larger than 20,000.
What is the response distribution? Leave this as 50%	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	**10**	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.

Alternate scenarios

With a sample size of	100	200	300	With a confidence level of	90	95	99
Your margin of error would be	**9.52%**	**6.53%**	**5.16%**	Your sample size would need to be	**7**	**10**	**17**

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 (
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

$$x = Z(c/100)^2 r(100-r)$$

$$n = Nx/((N-1)E^2 + x)$$

$$E = \mathrm{Sqrt}[(N - n)x/n(N-1)]$$

where N is the population size, r is the fraction of responses that you are interested in, and $Z(c/100)$ is the critical value for the confidence level c.

If you'd like to see how we perform the calculation, view the page source. This calculation is based on the Normal distribution, and assumes you have more than about 30 samples.

About **Response distribution**: If you ask a random sample of 10 people if they like donuts, and 9 of them say, "Yes", then the prediction that you make about the general population is different than it would be if 5 had said, "Yes", and 5 had said, "No". Setting the response distribution to 50% is the most conservative assumption. So just leave it at 50% unless you know what you're doing. The sample size calculator computes the critical value for the normal distribution. Wikipedia has good articles on statistics.

How do you like this web page? ○ **Good as-is** ○ **Could be even better**

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Sample size calculator

What margin of error can you accept? 5% is a common choice	32 %	The margin of error is the amount of error that you can tolerate. If 90% of respondents answer *yes*, while 10% answer *no*, you may be able to tolerate a larger amount of error than if the respondents are split 50-50 or 45-55. Lower margin of error requires a larger sample size.
What confidence level do you need? Typical choices are 90%, 95%, or 99%	95 %	The confidence level is the amount of uncertainty you can tolerate. Suppose that you have 20 yes-no questions in your survey. With a confidence level of 95%, you would expect that for one of the questions (1 in 20), the percentage of people who answer *yes* would be more than the margin of error away from the true answer. The true answer is the percentage you would get if you exhaustively interviewed everyone. Higher confidence level requires a larger sample size.
What is the population size? If you don't know, use 20000	5750	How many people are there to choose your random sample from? The sample size doesn't change much for populations larger than 20,000.
What is the response distribution? Leave this as 50%	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	**10**	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.

Alternate scenarios

With a sample size of	100	200	300	With a confidence level of	90	95	99
Your margin of error would be	**9.72%**	**6.81%**	**5.51%**	Your sample size would need to be	**7**	**10**	**17**

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 (
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".

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$$E = \mathrm{Sqrt}[(N - n)x / n(N-1)]$$

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.

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EXHIBIT 6

Case title: O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case nos.: 3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject: **Data**

Important Dates	
Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Thursday, July 5, 2018
Lab.Code § 203 (waiting time penalties) period begins:	Friday, July 5, 2019
Lab.Code § 2699 (civil penalties) period begins:	Monday, May 11, 2020
Pipich LWDA Notice:	Tuesday, May 11, 2021
Pipich Lawsuit:	Friday, July 16, 2021
Storm Class Action Lawsuit:	Tuesday, July 5, 2022
Lab.Code § 226 (wage statement penalties) period begins:	Monday, July 5, 2021

numbers highlighted in green were provided by O'Reilly
numbers highlighted in yellow were calculated based on the sample records

Classes / Groups sizes	Direct Hires	y Emplo	Total
UCL Class Members:	3,983	1,767	5,750
UCL Workweeks:	282,086	7,451	289,537
Waiting Time Penalties Class Members:			4,353
PAGA Aggrieved Employees:	3,149	1,767	4,916
PAGA Wage Statements/Pay Periods:	82,845	7,451	90,296

Averages	
Average Hourly Rate:	$ 19.07
Average Overtime Rate:	$ 28.61
Average Doubletime Rate:	$ 38.14
Average Work Hours Per Day:	8.10
Average Work Hours Per Week:	36.30
Average Workdays Per Week:	4.50
Workdays to Calendar Days (%):	64.29%
Pay cycle:	bi-Weekly (26 / year) (Temp agency employees were paid on a weekly basis)
Premium Wages Paid For 5% Sample:	$ 5,547.63

Case title:			O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.:			3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject:			**Unpaid wages**
Authority:			Lab.Code §§ 510, 1194, 1194.2, and 1198
Average Hourly Rate:		$	19.07
Average Overtime Rate:		$	28.61
Unpaid Hours Per Workday:	inutes of unpaid w		0.50
Average Workdays Per Week:			4.50
Actionable Workweeks:			289,537
Interest Rate:			10%
Unpaid Wages:		$	20,498,459.57

Case title:	O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.:	3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject:	**Unprovided Meal Periods**
Authority:	Lab.Code §§ 226.7, 512, and 1198

Average Hourly Rate:	$	19.07
Average Workdays Per Week:		4.50
Actionable Workweeks:		289,537
Actionable Workdays:		1,302,917
>>Percentage qualifying for meal periods (5+ shifts):		95.41%
Violation Rate (%)		100%
Meal Periods Premium Paid:	$	110,952.60
Unpaid Meal Period Premium Wages:	$	23,595,205.30

Case title:		O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.:		3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject:		**Unprovided Rest Periods**
Authority:		Lab.Code §§ 226.7 and 1198
Average Hourly Rate:	$	19.07
Average Workdays Per Week:	$	4.50
Actionable Workweeks:	$	289,537.00
Actionable Workdays:		1,302,917
>>Percentage qualifying for rest periods(3.5+ shifts):		98.60%
Violation Rate (%)		100%
Rest Period Premium Wages:	$	24,498,765.01

Case title: O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.: 3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject: **Unreimbursed expenses**
Authority: Lab.Code § 2802

PPE		
Cost of PPE Per Class Member:	$	15.00
UCL Class Members:		5,750
Interest Rate:		10%
Unreimbursed PPE:	$	94,875.00

Case title:		O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.:		3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject:		**Waiting Time / Final Wages**
Authority:		Lab.Code § 203
Waiting Time Penalties Class Members:		4,353
Days waiting:		30
Average Hourly Rate:	$	19.07
Average Overtime Rate:	$	28.61
Average Work Hours Per Day:		8.10
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.10
Waiting time penalties:	$	20,296,363.10

Case title: O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.: 3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject: **Wage Statement Penalties**
Authority: Lab.Code § 226

Wage Statement Class Members:		4,312
Wage Statement Class Wage Statements:		78,609
Initial Penalty:	$	50.00
Subsequent Penalty:	$	100.00
Statutory wage statement penalties:	**$**	**7,645,300.00**

Case title: O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.: 3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Pay periods	Total
Unpaid Minimum Wages (§ 1197):	§ 1197	$ 100.00	90,296	$ 9,029,600.00
Unpaid Overtime Wages/Unprovided Meal Periods (§§ 510/512):	§ 558	$ 50.00	90,296	$ 4,514,800.00
Unauthorized Rest Periods (§ 1198):	§ 2699	$ 100.00	90,296	$ 9,029,600.00
Unreimbursed Business Expenses (§ 2802):	§ 2699	$ 100.00	90,296	$ 9,029,600.00
Improper Paystubs (§ 226):	§ 2699	$ 100.00	90,296	$ 9,029,600.00
Untimely Wages (§§ 201-204):	§ 2699	$ 100.00	90,296	$ 9,029,600.00
Total:				**$ 49,662,800.00**

Case title: O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.: 3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject: **Totals**
Authority: Various

Restitution		
Unpaid Wages:	$	20,498,459.57
Unpaid Meal Period Premium Wages:	$	23,595,205.30
Rest Period Premium Wages:	$	24,498,765.01
Unreimbursed PPE:	$	94,875.00
Restitution subtotal:	$	68,687,304.88

Penalties		
Waiting time penalties:	$	20,296,363.10
Statutory wage statement penalties:	$	7,645,300.00
Unpaid Minimum Wages (§ 1197):civil penalties:	$	9,029,600.00
Unpaid Overtime Wages/Unprovided Meal Periods (§§ 510/512):civil penalties:	$	4,514,800.00
Unauthorized Rest Periods (§ 1198):civil penalties:	$	9,029,600.00
Unreimbursed Business Expenses (§ 2802):civil penalties:	$	9,029,600.00
Improper Paystubs (§ 226):civil penalties:	$	9,029,600.00
Untimely Wages (§§ 201-204):civil penalties:	$	9,029,600.00
Penalties subtotal:	$	77,604,463.10

Grand total:	**$**	**146,291,767.97**

EXHIBIT 7

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Email david@spivaklaw.com

Attorney for Plaintiffs,
ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
(UNLIMITED JURISDICTION)

ALINA GHRDILYAN; EVGENIA SULTANIAN; and all others similarly situated,

Plaintiffs,

vs.

RJ FINANCIAL, INC., a California corporation; RAMIL ABALKHAD, an individual; and DOES 1 through 50, inclusive,

Defendants.

Case No.: BC430633

CLASS ACTION

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

Action filed:	01/28/2010
CMC:	05/10/2010, 8:30 a.m.
FSC:	Not set
Trial:	Not set
Dept:	36, Hon. Gregory Alarcon

On behalf of both himself and all other persons similarly situated, plaintiff ALINA GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

THE SPIVAK LAW FIRM

"Defendants") for violations of the California Labor Code, the applicable Industrial Welfare Commission Order(s) ("Wage Order(s)"), and the California Business and Professions Code, and as grounds therefore alleges:

INTRODUCTION

1. This action arises out of the allegedly unlawful labor practices of Defendants in California. Through this class and collective action, Plaintiffs seek to represent the below-defined classes and subclasses of persons who Defendants have allegedly committed labor law violations against including, but not limited to, wage underpayments. As a result of the allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and other similarly situated persons.

PARTIES AND CONDUCT

A. Plaintiffs and Class Members

2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an individual, was employed in a position that she alleges Defendants have classified as non-exempt from the overtime requirements of the California Labor Code and the applicable wage order(s).

3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an individual, was employed in a position that she alleges Defendants have classified as non-exempt from the overtime requirements of the California Labor Code and the applicable wage order(s).

4. At relevant times during the applicable limitations periods, Plaintiffs allege that Defendants have failed to compensate them and Defendants' other California employees for all of the hours that they have worked, failed to compensate them for all of the overtime hours that they have worked at overtime rates, failed to provide them with all required rest and meal periods, failed to pay them additional required wages for rest and meal periods, improperly denied earned wages that Defendants without authorization deducted from paychecks or required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to provide them with accurate written wage statements.

B. Defendants

5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of California. It was at all relevant times a "person" under Labor Code § 18.

6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an individual residing in the County of Los Angeles, State of California, was at all relevant times the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times, ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.'s accounting and bookkeeping and all administrative functions, including payroll. The company maintained books and records by staff members under his direction. At all relevant times, ABALKHAD was a "person acting on behalf of an employer" (RJ FINANCIAL, INC. and the Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours and days of work in orders of the Industrial Welfare Commission as described below under Labor Code § 558. Also, he was at all relevant times a "person" under Labor Code § 18.

7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but are informed and believe and thereon allege that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sue these defendants by such fictitious names. Plaintiffs will amend the complaint to allege the true names and capacities of the DOE defendants when ascertained.

8. Plaintiffs are informed and believe and thereon allege that, at all relevant times herein, all defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other defendants.

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

not paying Plaintiffs and other members of the below-described classes in accordance with applicable California labor laws as alleged herein.

10. Plaintiffs are informed and believe and thereon allege that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

CLASS ACTION ALLEGATIONS

11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully alleged herein.

12. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to represent the following classes and subclasses of current, future, and/or former employees of Defendants defined below:

> **Wages Class:** All persons employed by Defendants in California who have not been paid for all hours worked 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.
>
> **Overtime Class:** All persons employed by Defendants in California who have not been paid at the legally required overtime rates for all hours worked in excess of eight (8) hours in one (1) day and/or forty (40) hours in one (1) week 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.
>
> **Rest Periods Class:** All persons employed by Defendants in California who were not provided with a net rest period of at least ten (10) minutes per each four (4) hour work period, or major portion thereof, 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.
>
> **Meal Periods Class:** All persons employed by Defendants in California who were not provided with uninterrupted thirty (30) minute meal periods during each work period of five (5) or more hours during the period beginning four (4) years prior to the filing of this action and ending on the

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date that final judgment is entered in this action.

Vacation Pay Class: All persons employed by Defendants in California who earned vested paid vacation days without receiving compensation for each vested paid vacation day 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.

Unauthorized Deduction Class: All persons employed by Defendants in California whose wages were deducted by Defendants without statutory authority or written consent 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.

Inaccurate Wage Statement 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,** and/or **Unauthorized Deduction Class** during the period beginning four (4) years prior to the filing of this action and ending on the date that judgment is entered in this action.

Former Employee 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** whose employment with Defendants ended 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, who either: a) were discharged and not paid all wages owed on or before the day of termination; or b) resigned 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**

Class, and/or **Indemnification Class,** who have been employed by Defendants in California at any time 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.

All-Inclusive Class: All members of the **Wages Class, Overtime Class, Rest Periods Class, Meal Periods Class, Inaccurate Wage Statement Class, Unauthorized Deduction Class, Former Employee Class,** and/or **Indemnification Class**.

13. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise readily ascertainable class.

14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this case as a class action.

15. The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiffs do not currently know the exact number of class members, Plaintiffs are informed and believe and thereon allege that the actual number of class members exceeds the minimum number required for numerosity purposes under California law.

16. 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. Do Defendants maintain policies or practices that systematically cause the **Wages Class** not to be paid for all hours worked?

B. Have members of the **Overtime Class** been paid at the legally required overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

C. Do Defendants maintain policies or practices that systematically cause the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

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

additional wages required for rest periods that were not provided?

G. Did Defendants fail to pay members of the **Meal Period Class** the additional wages required for meal periods that were not provided?

H. Did Defendants deduct wages from the paychecks of members of the **Unauthorized Deduction Class** without written consent?

I. Did Defendants intentionally fail to provide members of the **Inaccurate Wage Statement Class** with accurate written wage statements?

J. Did Defendants intentionally fail to indemnify members of the **Indemnification Class** for all necessary expenditures incurred by the members of the class in direct consequence of the discharge of their duties?

K. Are the vacation days received by members of the **Vacation Pay Class** subject to forfeiture?

L. Did Defendants fail to timely pay **Former Employee Class** all final wages owed following termination or discharge?

M. Are Defendants liable to members of the **Former Employee Class** for continuation wages under California Labor Code § 203?

N. Did Defendants engage in unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL Class?**

O. Are class members entitled to prejudgment interest?

P. Are class members entitled to attorneys' fees?

17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are informed and believe and thereon allege that Defendants have a policy or practice of failing to comply with the California Labor Code and the California Business and Professions Code as alleged herein.

18. Plaintiffs will fairly and adequately represent and protect the interests of the 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

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action cases.

19. A class action is vastly superior to other available means for fair and efficient adjudication of the 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 moneys owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

FIRST CLAIM FOR RELIEF

FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE CALIFORNIA LABOR CODE

(By Plaintiffs, the Wages Class, and the Overtime Class)

20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully alleged herein.

21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and the **Overtime Class** have been entitled to the protections of the California Labor Code, including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections include the rights to be timely paid all wages earned at the legally required rates for all hours worked.

22. California Labor Code § 510(a) requires employers to compensate employees at one and one-half times their regular rates of pay for:

A. All hours worked in excess of eight hours in one workday;

B. All hours worked in excess of forty hours in one workweek; and,

C. The first eight hours worked on a seventh consecutive workday during a workweek.

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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 §§

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226.7 and 512, and Wage order 11.

29. Pursuant to the applicable wage order(s), Defendants are required to provide Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten (10) minutes for each four (4) hour work period, or major portion thereof, during any given workday.

30. Pursuant to California Labor Code § 226.7, Defendants are required to pay Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for each rest period not provided in accordance with the applicable wage order(s).

31. During the applicable limitations period, Defendants failed to provide Plaintiffs with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major portion thereof, and failed to pay them the required additional wages for rest periods not provided to her.

32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a policy or practice of failing to provide other members of the **Rest Period Class** with net rest periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them the required additional wages for rest periods not provided to them.

33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work period during any given workday.

34. Pursuant to California Labor Code § 226.7, Defendants are required to pay Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for each meal period not provided in accordance with Wage order 11.

35. During the applicable limitations period, Defendants failed to provide Plaintiff with an uninterrupted thirty (30) minute meal period for each five (5) hour work period, including a second uninterrupted thirty (30) minute meal period on days he worked more than ten (10) hours, and failed to pay him the required additional wages for rest periods not provided to her.

36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a policy or practice of failing to provide other members of the **Meal Period Class** with uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10) hours, and failed to pay him the required additional wages for meal periods not provided to her.

37. Plaintiffs on behalf of themselves and the other members of the **Rest Period Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

THIRD CLAIM FOR RELIEF

FORFEITURE OF VACATION PAY

(By Plaintiffs and the Vacation Pay Class)

38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully alleged herein.

39. Under California Labor Code § 227.3 and applicable case law, vested paid vacation benefits and other similar forms of paid time off that earned based on labor performed are considered wages and cannot be subject to forfeiture without providing compensation for forfeited days at the applicable rates required by law.

40. Pursuant to written company policies, members of the **California Vacation Pay Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays" and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture pursuant to written company policies if they are not used within specified time periods.

41. During the applicable limitations period, Plaintiff has earned vested paid vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition Days," without being compensated by Defendants for each vested paid vacation day.

42. Plaintiff is informed and believes and thereon alleges that Defendants have 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

"Management Recognition Days," without compensating them for each vested paid vacation day.

43. As a result of the above, Plaintiff seeks declaratory and injunctive relief, damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

FOURTH CLAIM FOR RELIEF

FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS

(By Plaintiffs and the All-Inclusive Class)

44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully alleged herein.

45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class** have been employees of Defendants entitled to the benefits and protections of California Labor Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

46. Defendants failed to provide Plaintiffs accurate itemized statements in accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not, among other 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 worked.

47. Plaintiffs are informed and believe and thereon allege that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing the other members of the **All-Inclusive Class** wage statements did not, among other 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

worked.

48. Defendants' failure to provide Plaintiffs and the other members of the **All-Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs and the other class members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

49. As a result of being provided with inaccurate wage statements by Defendants, Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate information about wages and amounts deducted from wages to state and federal government agencies.

50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty dollars ($50) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000) per class member, and are also entitled to an award of costs and reasonable attorney's fees.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL FINAL WAGES

(Cal. Lab. Code §§ 201-203)

(By Plaintiffs and the Former Employee Class)

51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully alleged herein.

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

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Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs and the members of the **Former Employee Class** were entitled to payment of all wages earned and unpaid prior to the termination of their employment. Members of the **Former Employee Class** who are discharged employees were entitled to payment of their earned and unpaid wages no later than the day on which their employment was terminated. Members of the **Former Employee Class** who resigned were entitled to payment of their earned and unpaid wages within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous notice, no later than the day their employment terminated.

53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior to the termination of his employment with Defendants, including, but not limited to, additional earned wages for rest and meal periods not provided to them, and earned wages in the forms of vested paid vacation time and unlawfully deducted wages, in accordance with California Labor Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Former Employee Class** with a final paycheck encompassing all wages owed upon termination or discharge of employment, including, but not limited to, additional earned wages for rest and meal periods not provided to them, and/or earned wages in the forms of vested paid vacation time and/or unlawfully deducted wages, in accordance with California Labor Code § 201 or California Labor Code § 202.

54. Defendants' failure to pay Plaintiffs and members of the **Former Employee Class** all wages earned prior to termination in accordance with California Labor Code § 201 or California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege that Defendants had the ability to pay all wages earned by members of the **Former Employee Class** prior to termination in accordance with California Labor Code § 201 or California Labor Code § 202, but intentionally adopted policies or practices incompatible with the requirements of California Labor Code § 201 or California Labor Code § 202.

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

prior to the termination of their employment that Defendants did not pay them as well as continuations of their wages, from the days their earned and unpaid wages were due upon the termination of their employment until paid, up to a maximum of thirty (30) days, in amounts subject to proof.

56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are entitled to recover the full amount of their unpaid wages and interest thereon pursuant to California Labor Code § 218.6, continuation wages under California Labor Code § 203, reasonable attorney's fees, and costs of suit.

SIXTH CLAIM FOR RELIEF

UNAUTHORIZED DEDUCTIONS

(By Plaintiffs and the Unauthorized Deductions Class)

57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully alleged herein.

58. California Labor Code §§ 221 and 224 prohibit an employer from taking deductions from an employee's wages without the employee's express written consent or other legal authority for doing so.

59. At relevant times during the applicable limitations period, Defendants deducted wages from Plaintiffs' paychecks without their express written consent or other legal authority for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during the applicable limitations period, Defendants deducted wages from the paychecks of members of the **Unauthorized Deduction Class** without their express written consent or other legal authority for doing so.

60. By reason of the above, Plaintiffs and the members of the **Unauthorized Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class,** 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

Procedure § 1021.5.

SEVENTH CLAIM FOR RELIEF

FAILURE TO INDEMNIFY

(By Plaintiffs and the Indemnification Class)

61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully alleged herein.

62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties." California Labor Code § 452 of the Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form, and make of uniforms required to be worn by their employees. However, the Wage Orders impose an obligation on an employer that requires uniforms to be worn by its nonexempt employees as a condition of employment to provide and maintain such uniforms, regardless of the amount of the employees' compensation. The applicable wage order states, "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. The term "uniform" includes wearing apparel and accessories of distinctive design or color." If the employer does not choose to maintain employees' uniforms itself where it is required to do so, the Division of Labor Standards Enforcement takes the position that the employer may pay each affected employee a weekly maintenance allowance of an hour's pay at the state minimum wage rate ($7.50 as of January 1, 2007, and $8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

63. At relevant times during the applicable limitations period, Defendants required Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on behalf of themselves and the members of the **Indemnification Class,** seeks 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 Procedure § 1021.5.

EIGHTH CLAIM FOR RELIEF

UNFAIR COMPETITION

(By Plaintiffs and the California All-Inclusive Class)

65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully alleged herein.

66. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq*. California Business & Professions Code §§ 17200, *et seq*., protects against unfair competition and allows a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on her own behalf and on behalf of other similarly situated persons in a class action proceeding.

67. As a result of Defendants' violations of the California Labor Code as during the applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost money or property as a result of not being paid for hours worked, not being paid at legal overtime rates for all overtime hours worked, not being paid additional required wages for rest and meal periods not provided to them, being provided with inaccurate written wage statements that have had the effect of concealing other wage underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants' failure to timely pay all wages due or owed upon termination or resignation.

68. Plaintiffs are informed and believe that other similarly situated persons have 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

paid additional required wages for rest and meal periods not provided to them, being provided with inaccurate written wage statements that have had the effect of concealing other wage underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon termination or resignation.

69. Due to its unfair and unlawful business practices in violation of the California Labor Code as alleged herein, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their legal obligations to compensate employees for all earned wages and to provide them with reasonable means of verifying that they have been paid all earned wages with accurate written wage statements.

70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to recover reasonable attorney's fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

NINTH CLAIM FOR RELIEF

CIVIL PENALTIES

(By Plaintiffs and the All-Inclusive Class)

72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully alleged herein.

73. During the applicable time period, Defendants violated California Labor Code §§ 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

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

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penalties pursuant to the procedures specified in California Labor Code § 2699.3.

75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other aggrieved employees of Defendants are entitled to recover civil penalties for Defendants' violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510, 512, 1194 and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code §§ 200, 201, 202, 203, 224, 226.7, 1194, and 2802, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2));

B. 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 plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210);

C. For violations of California Labor Code § 226(a), two hundred fifty dollars ($250.00) per employee for initial violation and one thousand dollars ($1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3); and,

D. For violations of California Labor Code §§ 510 and 512, fifty dollars ($50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code § 558).

76. Plaintiffs have complied with the procedures for bringing suit specified in 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

("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiffs anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend to investigate the violations of the California Labor Code alleged herein.

77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of the **All-Inclusive Class** are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays for relief and judgment against Defendants as follows:

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

B. An order that Plaintiffs be appointed class representatives;

C. An order that counsel for Plaintiffs be appointed class counsel;

D. Declaratory relief;

E. Injunctive relief;

F. Actual damages;

G. Liquidated damages;

H. Restitution;

I. Civil penalties;

J. Statutory penalties;

K. Pre-judgment interest;

L. Costs of suit;

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M. Reasonable attorney's fees; and

N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By: _____

DAVID G. SPIVAK, Attorney for Plaintiff, ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

THE SPIVAK LAW FIRM

EXHIBIT 8

CASE NUMBER: BC430633
CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
RJ FINANCIAL, ET AL.,
LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
APPEARANCES: (SEE TITLE PAGE.)
REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
TIME: A.M. SESSION

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT:)

THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS. JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT. I WILL DO SOME MORE WORK WITH YOU.

(A PAUSE IN THE PROCEEDINGS.)

THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO HERE AND I GUESS I WILL START THIS WAY.

I SAID I AM GOING TO BRING OUT TWO THINGS. I BROUGHT OUT ONLY ONE.

(A PAUSE IN THE PROCEEDINGS.)

THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

UNDER CALIFORNIA CONSTITUTION ARTICLE VI, SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL GUARANTEES.

I WILL CITE YOU THREE CASES WHERE THAT POINT IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C., (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES, (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS COURT EXPRESSED THIS VIEW.

RULES OF COURT HAVE THE FORCE OF POSITIVE LAW. THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR CONSTITUTIONAL GUARANTEES.

SO THE HIERARCHY THEN WOULD BE CONSTITUTION, STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

I SAY THAT BECAUSE THE CASE OF WHITTINGTON

VERSUS MCKINNEY -- WHITTINGTON IS SPELLED W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 -- CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION, GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY WAS, AS I SAY, DECIDED IN 1991.

IN 2010, EFFECTIVE JANUARY 1, 2010, THE CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION AND STATEMENT DECISION AND JUDGMENT.

THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO THE (C) SUBSECTION.

IT READS NOW, (READING:)

THE COURT IN ITS TENTATIVE DECISION MAY:

STATE THAT IT IS THE COURT'S PROPOSED STATEMENT OF DECISION, SUBJECT TO A PARTY'S OBJECTION UNDER SUBSECTION (G);

(2) INDICATE THAT THE COURT WILL PREPARE A STATEMENT OF DECISION;

(3) ORDER A PARTY TO PREPARE A STATEMENT OF DECISION; OR

(4) DIRECT THAT THE TENTATIVE DECISION

WILL BECOME THE STATEMENT OF DECISION UNLESS, WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE TENTATIVE DECISION, A PARTY SPECIFIES THOSE PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE TENTATIVE DECISION.

NOW, I WILL NOT USE METHOD TWO. THAT'S THE COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE TENTATIVE DECISION.

I WOULD LIKE TO HEAR FROM BOTH SIDES NOW CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE PARTIES OR TEN DAYS.

THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1), (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE TENTATIVE DECISION.

MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

THE COURT: STATE THAT THIS IS THE COURT'S STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER (G)?

MR. SABZEVAR: YES, YOUR HONOR.

THE COURT: PLAINTIFF?

MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

THE COURT: ALL RIGHT.

MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE PREVAILING PARTY.

THE COURT: UH-HUH. I'M GOING TO USE -- I APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S 3.1590(C)(4).

SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL STATEMENT OF DECISION.

THIS CASE CAME BEFORE ME PRESIDING IN THIS DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

THE CASE WAS SUBMITTED FOR DECISION TODAY, THE 23RD OF APRIL, 2012.

IN THIS CASE, TWO PLAINTIFFS CLAIM THAT DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH IS AT LABOR CODE 2698, AND FOLLOWING.

IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS; NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

THE DEFENDANT'S ANSWER TO THE FIRST AMENDED COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

INSOFAR AS IT'S PERTINENT TO THIS PORTION OF MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

> SUBSECTION (A), NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY PROVISION OF THIS CODE THAT PROVIDES FOR A CIVIL PENALTY TO BE ASSESSED AND COLLECTED BY THE LABOR AND WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS, AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS CODE MAY, AS AN ALTERNATIVE, BE RECOVERED THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO THE PROCEDURES SPECIFIED IN SECTION 2699.3.

THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO DEFENDANT ABALKHAD.

THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11 PROCEEDING, WHICH IS STILL PENDING.

PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL. ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE CORPORATION.

THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA -- BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

I'M GOING TO REFER TO THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER -- I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE. THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

46 CALIFORNIA 4TH, 969, 981 TO 982.

WE WILL GO INTO RECESS NOW. COME BACK AT 1:30, PLEASE.

(AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS, A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH 365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES -- THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558. AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS COMMITTED. THAT'S LABOR CODE 2699(G)(1).

THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED TO WHAT THEY HAVE CALLED THE BRINKER CASE.

NOW, WHAT THEY ARE REFERRING TO IS THE CASE ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN, MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS WITNESSES ARGUED AND WRANGLED WITH THE QUESTIONERS DURING TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A). THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE CODE 780(J).

MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E) AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT PAGES 283 TO 284.

ASPECTS OF THE TESTIMONY OF THESE WITNESSES, THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(B).

FURTHERMORE, EVIDENCE CODE SECTION 412 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST. THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES, TAKEN THIS INTO CONSIDERATION.

BUT ALL THAT HAVING BEEN SAID, THE COURT DOES NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION 107, FOURTH PARAGRAPH.

THE DATES INVOLVED IN THIS CASE -- AND THE DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM UNDER THOSE THEORIES.

THE THEORIES I'M REFERRING TO ARE LABOR CODE 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER ARE ASSOCIATED THEORIES OF LIABILITY.

IN OTHER WORDS, I AM FINDING THAT UNDER 558 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

I'M GOING TO MAKE A FINDING ON THAT, AS YOU WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S POSITION.

NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO THE PLAINTIFFS'S POSITION.

NOW -- PARDON ME. I WILL SAY THIS.

AS YOU CAN TELL, I AM AT SOME PAINS TO GO

THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS, ARE NOT BEYOND REASONABLE ARGUMENT.

MY DECISION IS, AS I HAVE EXPRESSED IT, AND I BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

I HAVE COMPARED THE EMPLOYEE HANDBOOKS, EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS THE ONLY PERTINENT EMPLOYEE HANDBOOK.

I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY, 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY; SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010, SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

AS I HAVE SAID, THIS SUIT WAS FILED ON THE 28TH OF JANUARY, 2010.

ONE OF THE COMPLICATING FACTORS IN THIS CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY HAVE DONE SO SUCCESSFULLY.

THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE OVERTIME ITEMS.

IT IS ALSO TRUE -- BY THE WAY, THIS IS PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT CLAIM THAT THEY DO.

FOR THE REASONS THAT I HAVE MENTIONED EARLIER ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

THE TERM "WILLFUL" UNDER THE LABOR CODE -- THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA APPELLATE 3D 1 AT PAGES 7 AND 8.

OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE WORD "WILLFUL."

I WILL MAKE A COUPLE OF OTHER POINTS.

I RECOGNIZE THE INTENSITY WITH WHICH THE DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS TYPE.

I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA -- 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

I CITE THOSE TWO CASES NOT FOR THE PROPOSITION THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR FEES.

IN THE PREMISES OF THIS CASE, THOUGH, FOR REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID, PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE 75 PERCENT.

SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE, AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL MINISTERIAL ACTS.

PARDON ME.

WITH RESPECT TO THE -- TO THE REMEDIES, IT SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

I THINK THAT THE EVIDENCE ESTABLISHES

VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE CLEAR.

WITH RESPECT TO THE GHRDILYAN 558-510-512 LABOR CODE RECOVERY, I AM GOING TO AWARD $7,654.60 -- THAT'S EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

WITH RESPECT TO THE 1197.1 THEORY, WITH 1198 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE $14,218 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

WITH RESPECT TO SULTANIAN, MY DETERMINATION IS THAT REGARDING THE LABOR CODE 558-510-512 THEORY, MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF $5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST MR. ABALKHAD $13,936.50. TOTAL IS $19,200.69, AND THAT'S THE AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT AGAINST MR. ABALKHAD.

THIS NOW BRINGS US TO THE AWARD IN FAVOR OF THE SO-CALLED AGGRIEVED EMPLOYEES.

MY DETERMINATION IS THAT THE AGGRIEVED EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

THE TWO PLAINTIFFS IN OUR CASE.

I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

WITH RESPECT TO THE LABOR CODE 558, 510, AND 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE $2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER $125,000.

WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD WILL BE REQUIRED TO PAY IS NOT $3,269,490, WHICH WAS THE AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT RATHER $200,000.

NOW, THAT COMES OUT TO A TOTAL THEN OF $325,000.

NOW, IN DOING THIS, I HAVE EXERCISED MY DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW. MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS BUSINESSES.

BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS A REDUCTION OR SOFTENING OF THE PENALTIES.

NOW, I WILL ALSO SAY THE FOLLOWING. IF ON APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I HAVE MADE REFERENCE TO.

HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN ADDITIONAL $200,000 AS TO THE AGGRIEVED EMPLOYEES.

NOW, I WILL SAY THAT THESE AMOUNTS ARE, I RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD. IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE LAWYERS.

FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

MR. SPIVAK: WAS THERE SOME FINDING AS TO THE ADDITIONAL $200,000 WITH RESPECT TO THE INDIVIDUAL PLAINTIFFS, YOUR HONOR?

YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR CALCULATION.

THE COURT: YEAH.

MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

THE COURT: SHOW ME -- JUST A SECOND. COULD YOU, PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET ME DO THAT NOW.

THE PLAINTIFFS CONTEND THAT THERE WERE THESE WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226, UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR -- OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO BE.

EACH OF THOSE CONTENTIONS -- EACH OF THOSE THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD AWARD EACH OF THE PLAINTIFFS AS PENALTIES $60,000 EACH; 60 PLUS 60 IS 120.

NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A NUMBER THAT I THINK IS APPROPRIATE.

NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS, AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE CORPORATION.

WHAT I AM SAYING CONCERNING THESE OTHER PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN WHOLE.

I WANT TO PUT THESE PEOPLE IN A POSITION SO THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT FORECLOSED IT.

I AM EXTREMELY CONCERNED TO STATE THIS IN THAT WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION PROCESS AS MUCH AS THIS COURT CAN.

NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY, 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE -- FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT, REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY, 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT -- THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE THE DEFAULT SET ASIDE.

NOW IS THERE ANYTHING THAT I AM SUPPOSED TO SAY?

MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

MR. SABZEVAR: NO, YOUR HONOR.

THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO THEN.

I'M GOING TO SET A HEARING OUT IN THE FUTURE. FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS. I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN CONFORMITY WITH THE FOREGOING.

I AM GOING TO ORDER ALSO THAT THE PARTIES AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE JUDGMENT.

NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012, I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

MY IDEA WOULD BE THE JUDGMENT SHOULD BE SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE SCHEDULED.

MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN I SHOULD SCHEDULE IT?

MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

THE COURT: FORTY-FIVE DAYS.

MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE DATES?

MR. SPIVAK: YES, YOUR HONOR.

THE COURT: ARE YOU GOING TO BE ABLE TO DO THE THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE JUDGMENT?

MR. SPIVAK: YES, YOUR HONOR.

MR. SABZEVAR: THAT'S FINE.

THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU WHEN WE NEXT HAVE TO WORK ON THE CASE.

NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

FOUR WEEKS. HERE'S OUR SITUATION.

AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE COURT.

MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK. PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T KNOW WHAT'S GOING TO HAPPEN.

WHAT I WANT TO DO IS TO FINISH UP YOUR CASE AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW. BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR YOU.

ALL RIGHT. THANK YOU ALL VERY MUCH.

MR. SPIVAK: THANK YOU, YOUR HONOR.

MR. SABZEVAR: THANK YOU, YOUR HONOR.

THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON THE CASE.

(PROCEEDINGS CONCLUDED.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

ALINA GHRDILYAN, ET AL., PLAINTIFF, VS. RJ FINANCIAL, ET AL., DEFENDANTS,	)	CASE NO. BC430633 REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, ANGELA Z. PARADELA, CSR NO. 9659, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 29 COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE TESTIMONY AND PROCEEDINGS HELD ON APRIL 23, 2012, IN THE ABOVE-ENTITLED MATTER.

APRIL 27, 2012

_____, CSR NO. 9659

ANGELA Z. PARADELA, OFFICIAL REPORTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

ALINA GHRDILYAN, ET AL., PLAINTIFFS, VS. RJ FINANCIAL, ET AL., DEFENDANTS,	CASE NO. BC430633

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, APRIL 23, 2012

APPEARANCES:

FOR THE PLAINTIFFS: DAVID SPIVAK, ATTORNEY AT LAW

LOUIS BENOWITZ, ATTORNEY AT LAW

FOR THE DEFENDANTS: MICHAEL SABZEVAR, ATTORNEY AT LAW

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 9

JOINT PROSECUTION AGREEMENT

This Joint Prosecution Agreement ("Agreement") is entered into effective December 10, 2021 (the "Effective Date") and sets forth the terms of the co-counsel relationship by and among David Spivak and The Spivak Law Firm ("Spivak"), Walter Haines and United Employees Law Group ("UELG"), and Berger Montague PC ("BMPC") (collectively "Attorneys"), in connection with the class action lawsuits entitled *Eve Storm v. Express Services, Inc., et al.*, Riverside County Superior Court, Case No. CVRI2104730 and *Jeffrey Pipich v. O'Reilly Auto Enterprises, LLC, et al.*, United States District Court for the Southern District of California, Case No. 3:2021CV01120 (collectively, "the Actions").

1. Relationship of Co-Counsel.

Attorneys will jointly litigate the Actions. Together they shall be responsible for directing the course and conduct of the Actions. Attorneys agree to work cooperatively and to keep each other apprised of all developments in the Actions, including communication with the clients, the courts, and opposing counsel.

2. Attorneys' Fees and Costs

Attorneys shall divide any fee award, including any multiplier (i.e., premium above the lodestar), as follows: 33 and 1/3% to Spivak and UELG; and 66 and 2/3% to BMPC, regardless of lodestar. Attorneys will each pay their own "in house" expenses and costs with respect to the Actions such as copying, telephone charges, postage, travel, and on-line research (e.g., Lexis and Westlaw). Attorneys shall split mutually agreeable "out of pocket" litigation costs, such as experts, document production, mediation and deposition costs, pro rata based on their fee split (i.e. 33 and 1/3% by Spivak and UELG and 66 and 2/3% by BMPC) starting on December 9, 2021 and going forward. If costs are not awarded or settled as a separate item, but rather as part of an undifferentiated sum for fees and costs, all costs and expenses paid by Attorneys in connection with the Actions will first be deducted from any total amount whether designated as a fee award or not.

Attorneys agree to use their best efforts to apportion the work in the Actions in a manner that reflects their fee split.

Following either a settlement or a judgment, the Attorneys will jointly bring a timely application for an award of attorneys' fees and costs in the court in which the Actions are pending, and will not oppose, disparage or otherwise undermine each other's portion of the application.

Attorneys will maintain contemporaneous time records and cost summaries for all legal work performed and costs reasonably incurred in the Actions. Attorneys will inform each other of their respective lodestar totals upon request during the pendency of the litigation, including total hours billed, hourly rate and fees billed for each timekeeper, as well as cost summaries.

Attorneys agree to direct Defendants and any claims administrator to pay the award of fees and costs in a manner that is consistent with this Agreement.

3. No Partnership, Joint Venture Or Agency Relationship

Nothing contained herein shall constitute or be construed to imply that a partnership, joint venture, employment, or principal/agent relationship exists between Attorneys as a result of this Agreement.

4. Professional Negligence

Attorneys assume no liability for each other's professional negligence. Attorneys maintain their

own insurance policy to cover errors or omissions.

5. Choice of Law, Statute of Limitations and Dispute Resolution

This Agreement shall be interpreted under the laws of the State of California. The Parties agree that any action in relation to an alleged breach of this Agreement shall be commenced in Los Angeles, California within one year of the date of the breach, without regard to the date the breach is discovered. Any action not brought within that one-year time period shall be barred, without regard to any other limitations period set forth by law or statute. All disputes, controversies, or claims arising out of or relating to this Agreement shall be submitted to binding arbitration in accordance with the applicable rules of the JAMS then in effect, except that the Parties may seek the imposition of liens, temporary restraining orders, or other injunctive relief through court order.

6. Client Consent

Attorneys agree that they will obtain their respective clients' separate written consent to this Agreement.

7. Full Agreement

This is an integrated contract and reflects the full agreement of the parties, and it may only be modified in writing. No prior or contemporaneous written or oral representations may be admitted as to the meaning and/or mutual intent of the terms set forth herein.

8. Execution in Counterparts

This Agreement may be executed in counterparts, and a fully executed photocopy, facsimile, or .pdf hereof shall be as binding and valid as a fully executed original.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

THE SPIVAK LAW FIRM

Date: 12/20/2021

DocuSigned by:
David Spivak
64E7171E6E8F471...

David Spivak

UNITED EMPLOYEES LAW GROUP

Date: 12/20/2021

DocuSigned by:
Walter Haines
61E3B813239644F...

Walter Haines

BERGER MONTAGUE PC

Date: 12/20/2021

DocuSigned by:
765F845DD3AA453...

Camille Fundora Rodriguez

EXHIBIT "A" TO JOINT PROSECUTION AGREEMENT

Client Consent Pursuant to California Rules of Professional Conduct Rule 1.5.1

I, Jeffrey Pipich, state as follows:

1. I have read and received a copy of the Joint Prosecution Agreement between The Spivak Law Firm, United Employees Law Group, and Berger Montague PC relating to the cases:

   A. *Eve Storm v. Express Services, Inc., et al.*, Riverside County Superior Court Case No. CVRI2104730.

   B. *Jeffrey Pipich v. O'Reilly Auto Enterprises, LLC, et al.*, United States District Court for the Southern District of California Case No. 3:2021CV01120.

2. I have been advised in writing that the attorneys in these Actions have entered into a "Joint Prosecution Agreement," through which they will jointly prosecute the Actions.

3. I understand that the attorneys representing the current and former employees of Express Services, Inc. and O'Reilly Auto Enterprises, LLC will divide any attorney's fees awarded by the court(s) as follows:

Attorney	Percentage of Fee Award
The Spivak Law Firm & United Employees Law Group	33 and 1/3%
Berger Montague PC	66 and 2/3%

5. My attorney has answered any and all questions that I have about the proposed fee division. I understand the proposed fee division fully.

6. I hereby consent to the proposed fee division.

Dated: December 22, 2021

DocuSigned by:
Jeffrey Pipich
83F7D7D4D72A41B...

Jeffrey Pipich

EXHIBIT "B" TO JOINT PROSECUTION AGREEMENT

Client Consent Pursuant to California Rules of Professional Conduct Rule 1.5.1

I, Eve Storm, state as follows:

4. I have read and received a copy of the Joint Prosecution Agreement between The Spivak Law Firm, United Employees Law Group, and Berger Montague PC relating to the cases:

   A. *Eve Storm v. Express Services, Inc., et al.*, Riverside County Superior Court Case No. CVRI2104730.

   B. *Jeffrey Pipich v. O'Reilly Auto Enterprises, LLC, et al.,* United States District Court for the Southern District of California Case No. 3:2021CV01120.

5. I have been advised in writing that the attorneys in these Actions have entered into a "Joint Prosecution Agreement," through which they will jointly prosecute the Actions.

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Attorney	Percentage of Fee Award
The Spivak Law Firm & United Employees Law Group	33 and 1/3%
Berger Montague PC	66 and 2/3%

5. My attorney has answered any and all questions that I have about the proposed fee division. I understand the proposed fee division fully.

6. I hereby consent to the proposed fee division.

Dated: 12 / 27 / 2021, 2021

Eve Storm

AMENDED JOINT PROSECUTION AGREEMENT

This Amended Joint Prosecution Agreement ("Amended Agreement") is entered into effective October 26, 2023 (the "Effective Date") and sets forth the terms of the co-counsel relationship by and among The Spivak Law Firm ("Spivak"), United Employees Law Group ("UELG"), and Berger Montague PC ("BMPC") (collectively, the "Attorneys"), in connection with the class and representative action lawsuits entitled *Jeffrey Pipich v. O'Reilly Auto Enterprises, LLC, et al.*, No. 3:21-cv-01120 (S.D. Cal.); *Eve Storm v. Express Services, Inc., et al,*. No. CVRI2104730 (County of Riverside Superior Court); *Eve Storm v. O'Reilly Auto Enterprises, LLC, et al*., No. 5:23-cv-00597 (C.D. Cal.); and *Gary Cull v. O'Reilly Auto Enterprises, LLC, et al*., No. 5:23-cv-01623 (C.D. Cal.) (collectively, "the Actions"). This Amended Agreement supersedes the Attorneys' Agreement dated December 10, 2021.

1. Relationship of Co-Counsel

Attorneys will continue to jointly litigate the Actions. Together they shall be responsible for directing the course and conduct of the Actions. Attorneys agree to work cooperatively and to keep each other apprised of all developments in the Actions, including communication with the clients, the courts, and opposing counsel.

2. Attorneys' Fees and Costs

Attorneys shall divide any fee award, including any multiplier (*i.e.*, premium above the lodestar), as follows: 66 and 2/3% to Spivak and UELG; and 33 and 1/3% to BMPC, regardless of lodestar. Attorneys will each pay their own "in house" expenses and costs with respect to the Actions such as copying, telephone charges, postage, travel, and on-line research (e.g., Lexis and Westlaw). Attorneys shall split mutually agreeable "out of pocket" litigation costs, such as experts, document production, mediation and deposition costs, pro rata based on their fee split (*i.e.*, 66 and 2/3% by Spivak and UELG and 33 and 1/3% by BMPC) starting on October 26, 2023 and going forward. If costs are not awarded or settled as a separate item, but rather as part of an undifferentiated sum for fees and costs, all costs and expenses paid by Attorneys in connection with the Actions will first be deducted from any total amount whether designated as a fee award or not.

Attorneys agree to use their best efforts to apportion the work in the Actions in a manner that reflects their fee split.

Following either a settlement or a judgment, the Attorneys will jointly bring a timely application for an award of attorneys' fees and costs in the court in which the Actions are pending, and will not oppose, disparage or otherwise undermine each other's portion of the application.

Attorneys will maintain contemporaneous time records and cost summaries for all legal work performed and costs reasonably incurred in the Actions. Attorneys will inform each other of their respective lodestar totals upon request during the pendency of the litigation, including total hours billed, hourly rate and fees billed for each timekeeper, as well as cost summaries.

Attorneys agree to direct Defendants and any claims administrator to pay the award of fees and costs in a manner that is consistent with this Agreement.

3. No Partnership, Joint Venture Or Agency Relationship

Nothing contained herein shall constitute or be construed to imply that a partnership, joint venture, employment, or principal/agent relationship exists between Attorneys as a result of this Agreement.

4. Professional Negligence

Attorneys assume no liability for each other's professional negligence. Attorneys maintain their own insurance policy to cover errors or omissions.

5. Choice of Law, Statute of Limitations and Dispute Resolution

This Agreement shall be interpreted under the laws of the State of California. The Parties agree that any action in relation to an alleged breach of this Agreement shall be commenced in Los Angeles, California within one year of the date of the breach, without regard to the date the breach is discovered. Any action not brought within that one-year time period shall be barred, without regard to any other limitations period set forth by law or statute. All disputes, controversies, or claims arising out of or relating to this Agreement shall be submitted to binding arbitration in accordance with the applicable rules of the JAMS then in effect, except that the Parties may seek the imposition of liens, temporary restraining orders, or other injunctive relief through court order.

6. Full Agreement

This is an integrated contract and reflects the full agreement of the parties, and it may only be modified in writing. No prior or contemporaneous written or oral representations may be admitted as to the meaning and/or mutual intent of the terms set forth herein.

7. Execution in Counterparts

This Agreement may be executed in counterparts, and a fully executed photocopy, facsimile, or .pdf hereof shall be as binding and valid as a fully executed original.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

THE SPIVAK LAW FIRM

Date: 11 / 14 / 2023

David Spivak

UNITED EMPLOYEES LAW GROUP

Date:_____

Walter Haines

BERGER MONTAGUE PC

Date:_____

Alexandra K. Piazza

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IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

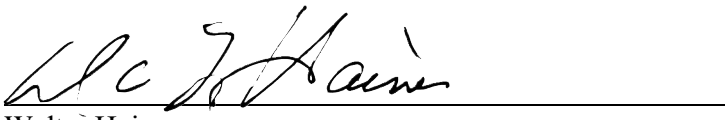
THE SPIVAK LAW FIRM

Date:_____

_____
David Spivak

UNITED EMPLOYEES LAW GROUP

Date: November 27, 2023



Walter Haines

BERGER MONTAGUE PC

Date:_____

_____
Alexandra K. Piazza

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Attorneys assume no liability for each other's professional negligence. Attorneys maintain their own insurance policy to cover errors or omissions.

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IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

THE SPIVAK LAW FIRM

Date:_____

_____
David Spivak

UNITED EMPLOYEES LAW GROUP

Date:_____

_____
Walter Haines

BERGER MONTAGUE PC

Date: 11/20/2023

DocuSigned by:
Alexandra K. Piazza
A884231B873346E...
Alexandra K. Piazza

EXHIBIT "A" TO AMENDED JOINT PROSECUTION AGREEMENT

Client Consent Pursuant to California Rules of Professional Conduct Rule 1.5.1

I, Jeffrey Pipich, state as follows:

1. I have read and received a copy of the Amended Joint Prosecution Agreement between The Spivak Law Firm, United Employees Law Group, and Berger Montague PC relating to the cases:

   A. *Eve Storm v. O'Reilly Auto Enterprises, LLC, et al.*, United States District Court for Central District of California Case No. 5:23-cv-00597.

   B. *Eve Storm v. Express Services, Inc., et al,*. County of Riverside Superior Court Case No. CVRI2104730.

   C. *Jeffrey Pipich v. O'Reilly Auto Enterprises, LLC, et al.,* United States District Court for the Southern District of California Case No. 3:2021CV01120.

   D. *Gary Cull v. O'Reilly Auto Enterprises, LLC, et al*., United States District Court for Central District of California Case No. 5:23-cv-01623.

2. I have been advised in writing that the attorneys in these Actions have entered into a "Amended Joint Prosecution Agreement," through which they will jointly prosecute the Actions.

3. I understand that the attorneys representing the current and former employees of Express Services, Inc. and O'Reilly Auto Enterprises, LLC will divide any attorney's fees awarded by the court(s) as follows:

Attorney	Percentage of Fee Award
The Spivak Law Firm & United Employees Law Group	66 and 2/3%
Berger Montague PC	33 and 1/3%

4. My attorney has answered any and all questions that I have about the proposed fee division. I understand the proposed fee division fully.

6. I hereby consent to the proposed fee division.

Dated: 11/20/2023

DocuSigned by:
Jeffrey Pipich
83F7D7D4D72A41B...

Jeffrey Pipich

EXHIBIT "B" TO AMENDED JOINT PROSECUTION AGREEMENT

Client Consent Pursuant to California Rules of Professional Conduct Rule 1.5.1

I, Eve Storm, state as follows:

1. I have read and received a copy of the Amended Joint Prosecution Agreement between The Spivak Law Firm, United Employees Law Group, and Berger Montague PC relating to the cases:

   A. *Eve Storm v. O'Reilly Auto Enterprises, LLC, et al.*, United States District Court for Central District of California Case No. 5:23-cv-00597.

   B. *Eve Storm v. Express Services, Inc., et al*,. County of Riverside Superior Court Case No. CVRI2104730.

   C. *Jeffrey Pipich v. O'Reilly Auto Enterprises, LLC, et al.,* United States District Court for the Southern District of California Case No. 3:2021CV01120.

   D. *Gary Cull v. O'Reilly Auto Enterprises, LLC, et al*., United States District Court for Central District of California Case No. 5:23-cv-01623.

2. I have been advised in writing that the attorneys in these Actions have entered into a "Amended Joint Prosecution Agreement," through which they will jointly prosecute the Actions.

3. I understand that the attorneys representing the current and former employees of Express Services, Inc. and O'Reilly Auto Enterprises, LLC will divide any attorney's fees awarded by the court(s) as follows:

Attorney	Percentage of Fee Award
The Spivak Law Firm & United Employees Law Group	66 and 2/3%
Berger Montague PC	33 and 1/3%

4. My attorney has answered any and all questions that I have about the proposed fee division. I understand the proposed fee division fully.

5. I hereby consent to the proposed fee division.

Dated: 11 / 14 / 2023

Eve Storm

EXHIBIT "C" TO AMENDED JOINT PROSECUTION AGREEMENT

Client Consent Pursuant to California Rules of Professional Conduct Rule 1.5.1

I, Gary Cull, state as follows:

1. I have read and received a copy of the Amended Joint Prosecution Agreement between The Spivak Law Firm, United Employees Law Group, and Berger Montague PC relating to the cases:

   A. *Eve Storm v. O'Reilly Auto Enterprises, LLC, et al.*, United States District Court for Central District of California Case No. 5:23-cv-00597.

   B. *Eve Storm v. Express Services, Inc., et al*,. County of Riverside Superior Court Case No. CVRI2104730.

   C. *Jeffrey Pipich v. O'Reilly Auto Enterprises, LLC, et al.,* United States District Court for the Southern District of California Case No. 3:2021CV01120.

   D. *Gary Cull v. O'Reilly Auto Enterprises, LLC, et al*., United States District Court for Central District of California Case No. 5:23-cv-01623.

2. I have been advised in writing that the attorneys in these Actions have entered into a "Amended Joint Prosecution Agreement," through which they will jointly prosecute the Actions.

3. I understand that the attorneys representing the current and former employees of Express Services, Inc. and O'Reilly Auto Enterprises, LLC will divide any attorney's fees awarded by the court(s) as follows:

Attorney	Percentage of Fee Award
The Spivak Law Firm & United Employees Law Group	66 and 2/3%
Berger Montague PC	33 and 1/3%

4. My attorney has answered any and all questions that I have about the proposed fee division. I understand the proposed fee division fully.

5. I hereby consent to the proposed fee division.

Dated: 11 / 16 / 2023

Gary Cull

EXHIBIT 10

2013 WL 766535
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles F. Palmer, Judge. Reversed and remanded. (Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

Dickstein Shapiro, Arthur Silbergeld, Christine de Bretteville for Defendants and Appellants.

Altshuler Berzon, Michael Rubin, Eileen B. Goldsmith; Law Offices of Joseph D. Tuchmayer, Joseph D. Tuchmayer; Law Offices of Todd Arron, Todd S. Arron for Plaintiffs and Respondents.

Opinion

BOREN, P.J.

***1** We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the "**prevailing** party" under Labor Code section **218**.**5**.[1]

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants' payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a "catalyst" warranting an award of attorney fees to plaintiffs.

FACTS[2]

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of $10,000 for 2000–2001 and Zalewa received a bonus of $75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants' employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a "residual bonus." A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § **218**.**5**. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees $0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from $455 to $35,719. The court awarded plaintiffs' counsel attorney fees of $881,715. The court rejected plaintiffs' claim under PAGA for lack of standing, because plaintiffs left defendants' employ before PAGA took effect in 2004.

***2** Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court's award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court's award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs "could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees."

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court's award of $881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.[3]

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of $307,146 as the **prevailing** party pursuant to § **218**.**5**, reasoning that this litigation was the catalyst for defendants' July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for $2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § **218**.**5** as authority for their right to recover attorney fees. In opposition to plaintiffs' request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants' view, the "catalyst" theory is inapposite because no public interest was vindicated by plaintiffs' lawsuit.

THE TRIAL COURT'S RULING

***3** The trial court denied defendants' motion for attorney fees. Citing § **218**.**5**, the court granted plaintiffs' motion for fees, finding that plaintiffs are the **prevailing** parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings: these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of $346,947.

DISCUSSION

1. ***Appeal and Review***

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169. 1175.) Specifically, we are asked whether § **218**.**5** permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not **prevail** on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. ***Overview of § 218.5***

Section **218**.**5** reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the **prevailing** party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or **employers**, whichever is the **prevailing** party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra,* 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. ***The Catalyst Theory***

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.[4] It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

***4** The doctrine " ' "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." ' " (*Graham, supra,* 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [ ] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation." (*Graham, supra,* 34 Cal.4th at pp. 560–561.)

" 'A plaintiff will be considered a "successful party" where an important right is vindicated "by activating defendants to modify their behavior." ' " (*Graham, supra,* 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham,* the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, "implicated an issue of public safety, and [ ] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards." (*Id.* at pp. 577–578.)

4. ***Plaintiffs' Right to Recover Attorney Fees***

Plaintiffs originally brought suit in 2004 "on behalf of themselves and the general public." They requested attorney fees pursuant to § **218**.**5**. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the **prevailing** party under § **218**.**5**, we import the definition used in the Code of Civil Procedure (*On–Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a **prevailing** party as "the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant." (Code Civ. Proc., § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § **218**.**5**, plaintiffs were not the **prevailing** party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § **218**.**5**, plaintiffs argue that the theory should apply, based on defendants' July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § **218**.**5**, which *mandates* an award of attorney fees to the "**prevailing** party." Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

***5** The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants' 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts "not only to determine the lawsuit's catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit." (*Graham, supra,* 34 Cal.4th at p. 576.) Plaintiffs cannot be a "successful party" if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs' lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra,* 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year's end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the "catalyst" theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor's constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a $1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit " 'that genuinely provide[d] a public benefit.' " (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. ***Defendants' Right to Recover Attorney Fees***

Section **218**.**5** is a reciprocal attorney fees statute that requires an award of fees to the "**prevailing** party" so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § **218**.**5** when they filed suit. Defendants were the **prevailing** parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [**prevailing** party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not **prevail** on any claims.

***6** Plaintiffs contend that their claims for fees under § **218**.**5** were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the **prevailing** party under § **218**.**5**. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § **218**.**5** lists only one remotely pertinent exception: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194."[5] Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who **prevail** on their minimum wage or overtime compensation claims.

Section **218**.**5** contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the **employer** to become the **prevailing** party in the litigation. Defendants are the **prevailing** party under § **218**.**5**, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.[6]

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the **prevailing** party.

We concur:

ASHMANN–GERST, J.

FERNS, J.[*]

Footnotes

[1] Labor Code section **218**.**5** will be referred to in this opinion as § **218**.**5**.

[2] The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

[3] Plaintiffs misinformed the trial court that the case was remanded to resolve "whether and in what amount *plaintiffs are entitled to*

reasonable fees for having achieved [a] substantial result for so many of the affected employees." (Italics added.) The opinion does not give a nod to plaintiffs' claim for fees.

[4] The statute reads, in relevant part, "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

[5] Section **218.5** contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.

[6] The issue of attorney fees following reversal of the judgment first arose in plaintiffs' petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.

[*] Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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EXHIBIT 11

2011 WL 5979937
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC–09–484879). | Nov. 30, 2011.

Attorneys and Law Firms

Michael Paul Guta, Law Offices of John E. Hill, Oakland, CA, for Plaintiff and Appellant.

Wesley Jerome Fastiff, Michael Gayland Pedhirney, Littler Mendelson, San Francisco, CA, for Defendant and Respondent.

Opinion

NEEDHAM, J.

***1** Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to Labor Code section 218.5, after the court granted respondent's motion for summary judgment. Appellant contends: (1) Labor Code section 218.5 did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under Labor Code section 1194; (2) the court should have apportioned the attorney fees between appellant's unpaid wages claim and her constructive termination claim, for which no attorney's fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.[1]

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was "owed wages" and was "owed for accrued paid time off," and she was entitled to a statutory penalty for unpaid wages under Labor Code section 203 and reasonable attorney fees and costs pursuant to Labor Code section 218.5. In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu's "conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment." In her cause of action for unfair business practices, she alleged that Café Tiramisu violated Business and Professions Code section 17200 by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and "reasonable attorney's fees, pursuant to Labor Code Section 218.5." Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not **prevail** on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the **prevailing** party, was eligible to recover its reasonable attorney fees and costs.[2]

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the **prevailing** party and entitled to recover its fees and costs under Labor Code section **218**.**5**. Café Tiramisu requested $36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

***2** Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under Labor Code section **218**.**5**, which authorizes recovery by the **prevailing** party, because her action was for overtime wages governed by Labor Code section 1194, which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of $36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) Labor Code section **218**.**5** was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. *Recovery of Attorney Fees Under Labor Code Section 218.5*

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to Labor Code section **218**.**5**.[3] Section **218**.**5** provides in pertinent part: "In any action brought for the *nonpayment of wages*, fringe benefits, or health and welfare or pension fund contributions, the court *shall* award reasonable attorney's fees and costs to the ***prevailing*** *party if* any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of section **218**.**5** was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to Labor Code [sections] 226.7 and 227.3." Section 226.7 refers to pay for time worked during mandated meal periods, and section 227.3 refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress–Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the **prevailing** party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. (Code Civ. Proc. § 1032, subd. (a)(4).)

Third, Maria expressly requested attorney fees and costs pursuant to section **218**.**5** upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees,* and costs of suit." (Italics added.)

***3** Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the **prevailing** party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.[4]

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled.* Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages,* constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

***4** Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the **prevailing** party to recover attorney fees. (*Earley,* at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: "The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars **employers** from relying on section **218**.**5** to recover fees in any action for *minimum* wages or *overtime* compensation. Section **218**.**5** would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for 'wages, fringe benefits, or health and welfare or pension fund contributions.' [Footnote omitted.]" (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley, supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.[5]

B. ***Apportionment Among Causes of Action***

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent–A–Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its "refusal to pay [her] wages owed." As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria "wages."

***5** Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. ***Apportionment as to Other Plaintiffs***

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the "deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases." She also states: "respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court."

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: SIMONS, Acting P.J., and BRUINIERS, J.

Footnotes

1 The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.

2 Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under Labor Code section 206.5. In August 2011, we affirmed the judgment.

3 Except where otherwise indicated, all statutory references hereafter are to the Labor Code.

4 Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "

5 It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

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EXHIBIT 12

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

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 Healthcare[1] (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."

[5] 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

EXHIBIT 13

2009 WL 4718721
Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S–07–2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

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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 statues providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, 29 U.S.C. § 216(b), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, 5 U.S.C. § 552a(g)(2)(B). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.

[4] Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that section 218.5 provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal .*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).

[5] Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT 14

05-30-2013 | 05:13 PM | ***Author:*** Robin Shea

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)

Earlier, I busted on "my own side" by giving four reasons why employers shouldn't be so quick to fire their employees. To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid *legal* claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

***Most people consider a lawsuit an "act of war."** They probably *were* on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to *sue*! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. *AWKWARD!* No wonder they've turned on you.

***Some employees really, sincerely do believe the company was in the right.** Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really *were* very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

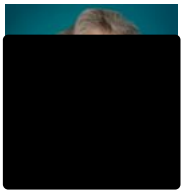
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably *don't* have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents **employees** in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the Employment and Labor Law Insider for additional insights from Robin Shea , a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

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Tags: *employee lawsuits*

EXHIBIT 15

April 29, 2014
HUFF POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning - make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over $150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

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 2
287 Fans

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 snuggly 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 1
SUPER USER · **56 Fans**

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 arguement that we have a

1 Superior Justice System
2 Freedom of religion
3 Separation of Church and State
4 Opportunity to pursue your capitalist dreams of career and family
5 That taxes pay for your well being (roads, FDA, national safety etc..)
6 National security (threat of invasion and subjugation by an enemy rule...)
7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

FAVE SHARE MORE

EXHIBIT 16

XPAND

Case Name:	**Storm v. O'Reilly**
Date:	March 20, 2024
Client Name:	Derek Paradis
Client Email:	Paradisd@higgslaw.com
Xpand Contact:	Jonathan Paul
Xpand Contact Email Address:	Jonathan@xpandlegal.com
Xpand Contact Phone Number:	(310) 948-7117

**Cost Estimate for Legal Administration Services*
**Pricing Good for 90 Days*
**Assumes Scope Within - Additional Services Priced Accordingly*

Key Assumptions Used for Pricing	
Class Size	6,500
Undeliverable Mail (estimated %)	10%
Forwarded Mail (estimated %)	5%
Toll Free Telephone Support	Yes
Website	Yes
Spanish Translation	Yes
National Change of Address (NCOA)	Yes
Wage Tax Reporting	Yes
Number of States for Tax Reporting	1
Number of Payment Distributions	1
Tax Reporting Years	1
Remaining Funds After Distribution	Cy Pres

Case Setup

Service	Type	Cost Per Piece	Volume	Total
Project Manager - Case Setup, Document Review & Timeline	Hourly	$125.00	3	$375.00
Data Analyst - Data Analysis, Formatting, Uploading to Database*	Hourly	$125.00	3	$375.00
NCOA (Includes CASS & LACS)	Flat Fee	$410.00	1	$410.00
Spanish Translation	Flat Fee	$750.00	1	$750.00
Toll Free Telephone Support	Flat Fee	$1,000.00	1	$1,000.00
Static Website	Flat Fee	$500.00	1	$500.00
			Total	**$3,410.00**

**Xpand assumes mailing data will be provided in Microsoft Excel or other usable format and will not require substantial manipulation. Additional formatting and manipulation will be billed at $125/hour.*

Notification

Service	Type	Cost Per Piece	Volume	Total
Print & Mail Notice Package	Per Piece	$0.90	6,500	$5,850.00
USPS First Class Mail - 1oz	Per Piece	$0.65	6,500	$4,225.00
Submission Processing (Opt Outs, Disputes, Objections)	Hourly	$75.00	3	$225.00
Undeliverable Mail Processing	Per Piece	$2.00	650	$1,300.00
Address Trace Undeliverable Mail	Per Piece	$2.00	650	$1,300.00
Remail Notice Package (Undeliverable & Forwards)	Per Piece	$3.00	845	$2,535.00
			Total	**$15,435.00**

Project Management

Service	Type	Cost Per Piece	Volume	Total
Project Manager - Client Inquiries, General Oversight & Management	Hourly	$100.00	10	$1,000.00
Status Reporting (Ongoing & Final)	Hourly	$75.00	4	$300.00
Declaration (Final Approval & Payment)	Hourly	$125.00	2	$250.00
Executive Oversight	Hourly	$200.00	1	$200.00
			Total	**$1,750.00**

Distribution

Service	Type	Cost Per Piece	Volume	Total
Project Manager - Setup & Preparation	Hourly	$125.00	3	$375.00
Data Analyst - Payment File Production & Quality Review	Hourly	$125.00	3	$375.00
Print & Mail Payments	Per Piece	$0.80	6,500	$5,200.00
USPS First Class Mail - 1oz	Per Piece	$0.65	6,500	$4,225.00
Undeliverable Payment Processing	Per Piece	$2.00	650	$1,300.00
Address Trace Undeliverable Payments	Per Piece	$2.00	650	$1,300.00
Remail Payments (Undeliverable & Forwards)	Per Piece	$4.00	845	$3,380.00
Tax ID Setup & Shutdown	Flat Fee	$250.00	1	$250.00
Qualified Settlement Fund (QSF) Creation, Reporting & Closure	Hourly	$100.00	10	$1,000.00
QSF Monthly Fees & Account Reconciliation	Per Piece	$100.00	4	$400.00
Process Remaining Funds	Flat Fee	$500.00	1	$500.00
			Total	**$18,305.00**

Total Case Cost - Flat Fee: $38,900.00

All services to be provided by Xpand Legal Consulting LLC (hereinafter, "Xpand") to Client shall be subject to the following terms and conditions:

- **Services:** Subject to the terms hereof, Xpand agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are referenced and in accordance of the Court's direction. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not include any services not referenced in the request for proposal. These services do not constitute legal services or advice. Xpand is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

- **Charges for Services:** Charges to the Client for services shall be on a time and materials basis at our prevailing rates and are subject to change. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to Xpand. Actual fees charged by Xpand to Client may be greater or less than the estimate, and Client shall be responsible for the payment of all charges and expenses in accordance with Section 5 below. Charges incurred related to corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. Xpand may derive financial benefits from financial institutions in connection with the deposit and investment of funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

- **Payment of Charges:** Xpand will process payment of charges once payments are made to class members and counsel in accordance with direction from the court. However, decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement or case status, do not affect the Client's liability to Xpand for payment of services. Services are not provided on a contingency fee basis.

- **Indemnification:** Client will indemnify and hold Xpand (and the officers, employees, affiliates and agents harmless against any Losses incurred by Xpand, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any aspect of the project by Xpand in accordance with Client's instructions.

- **Confidentiality:** Xpand maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to Xpand by Client. Should Xpand ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, Xpand will notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse Xpand for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If Xpand is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, Xpand will not be liable for breach of said obligation.

- **Data Rights:** Xpand does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by Xpand in the ordinary course of business in the performance of this Agreement.

- **Document Retention:** Unless directed otherwise in writing by Client, Xpand will maintain documents and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

- **Limitation of damages:** Xpand is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of Xpand to the Client shall not exceed the total amount billed to the Client for the services that give rise to any loss.

- **Termination:** The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to Xpand. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. Xpand may terminate this Agreement (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 responsible officer or principal of Xpand or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

- **Force Majeure:** To the extent performance by Xpand of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond Xpand's reasonable control, then such performance shall be excused and this Agreement, at Xpand's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

- **Waiver of Rights:** No failure or delay on the part of either party in exercising any right will operate as a waiver of, or impair, any right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in writing.

- **Jurisdiction:** The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

- **Entire Agreement:** These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

XPAND

ABOUT XPAND

Xpand is a fast-growing legal administration firm. With over 20 years of industry experience, CEO, Jonathan Paul, leverages his subject matter expertise to ensure excellence is at the core of all we do. Starting his legal administration career as a Project Manager, he later advanced into positions such as Senior Vice President at one of the largest administrators in the country and President of Sales & Marketing for a long-standing boutique firm. He now works closely with the project and case teams to ensure best in class processes are followed.

COO, Tiffany Paul, comes with over a decade of experience at one of the largest consumer goods companies in the world. Coupled with the successful launch and scale of her own startups, Tiffany brings creative solutions to a field that has a tendency to be stuck in its ways and has improved dozens of processes during her tenure running legal administration projects.

The case management team has been involved in projects spanning several practice areas, including:

- Data Breach
- Consumer Protection
- Discrimination
- Mass Tort
- PAGA
- Personal Injury
- Product Liability
- Wage and Hour
- ERISA
- Antitrust

ABOUT OUR STRATEGY

Xpand's taking a fresh look at the processes and procedures that have dominated the legal administration space for decades and quickly finding there is plenty of opportunity to innovate.

We've partnered with industry leaders in HR, IT, printing, telecom, banking, and tax reporting to build solutions that meet the needs of any project. Whether it's a small wage & hour case in need of cost effective administration or a multi-tiered mass tort case in need of sophisticated implementation, Xpand has the solution. We spend the time understanding the clients' needs before deploying the right resources in as quickly as 24 hours, allowing law firms to continue their day to day without disruption.

XPAND

ABOUT OUR SERVICES

Xpand is growing quickly and regularly adding services to our repertoire, but currently offers:

- Notification
- Project Management
- Print & Mail
- Call Center
- Legal Advertising
- Website Development
- Forms Processing
- Client Intake
- Address Location
- Data Management
- Qualified Settlement Fund (QSF) Management
- Fund Distribution
- Tax Reporting
- Medical Record Review
- Lien Resolution

ABOUT OUR EXPERIENCE

Cases the team has been involved in are:

- *Ramirez, et al. v. S&E Gourmet Cuts, Inc., Superior Court of California, County of San Bernardino*, Case No. CIVSB2201247
- *Johnson v Investment Concepts, Superior Court of California, County of San Diego,* Case No. 37-2022-00018300-CU-NP-CTL
- *Chavis v. Grocery Outlet, Superior Court of California, County of Sacramento,* Case No. 34-2021-00309003-CU-OE-GDS:
- *Janine Mireles v. Lodi Memorial Hospital Association, Inc. et al., Superior Court of California, County of San Joaquin,* Case No. STK-CV-UOE-2020-0004458
- *Busby v. Mission Loans, LLC, et al.*, *Superior Court of California, County of Los Angeles*, Case No. 23STCV07682
- *Barton v. United Development Group, Inc.*, *Superior Court of California*, *County of San Diego*, Case No. 37-2021-00039885-CU-OE-CTL
- *Fleschert v. Cedars-Sinai Medical Center*, *Superior Court of California, County of Los Angeles,* Case No. 19STCV05681
- *Cruz, et al. v. Los Compadres Restaurant, Inc.*, *Superior Court of California, County of Los Angeles,* Case No. 23STCV03673
- *Diaz v. New York Paving*
- *Bahramipour v. Citigroup Global Markets, Inc.*, Case No. C 04-4440 CW (N.D. Cal. Feb. 22, 2006)
- *Donohue v. AMN Services, LLC*, Case No. S253677, _P.3d ___, 2021 WL 728871 (Cal. Feb. 25, 2021)
- *Goddard, et al. v. Longs Drug Stores Corporation, et al.* Employee Overtime Litigation
- *Quintero v. Ready PAC Foods*, *Superior Court of California, County of Los Angeles,* Case No. 20STCV48608
- *Ramirez v. J.C. Penney Corporation*, Case No. 6:14-cv-00601-RWS-KNM
- *Cinthia Isabel Mojica et al. v Ready Pac Foods, Inc. et al.*, Case No. BC522170

XPAND

- *Lopez; Blevins; and Giron, vs. MOTEL 6,* Case No.: 56-2020-00542312-CU-OE-VTA
- *In re iPod Cases*, Judicial Council Coordination Proceeding, *Superior Court of California, County of San Mateo*, Case No. 4355
- *Frank v. United Airlines, Inc.* (9th Cir. 2000) 216 F.3d 845
- *Archie v. UPS*
- *Prata v. Bank One, N.A., Superior Court of California, County of Los Angeles,* Case No. BC211961
- *Edell v. Bank of America,*
- *Big Lots Overtime Cases (Bonaime v. PNS Stores)* Employee Overtime Litigation
- *Albrecht v. Rite Aid Corporation*, *Superior Court of California*, *County of San Diego,* Case No. 729219
- *Nash v. Red Lobster, Superior Court of the State of California, County of Orange*
- *Nash v. Olive Garden, Superior Court of the State of California, County of Orange*
- Mass Tort: Several medical device and pharmaceutical cases, which are confidential.

EXHIBIT 17

CPTGroup
Class Action Administrators

CASE NAME: STORM V. O'REILLY

Requesting Attorney: Emily Houng Ly
Plaintiff or Defense: Plaintiff
Firm Name: The Spivak Law Firm
Telephone: (818) 205-9033
Email: emily@spivaklaw.com

Date: March 13, 2024
Prepared By: Tim Phillips
50 Corporate Park, Irvine CA 92606
Tim@CPTGroup.com
Direct Number: (818) 415-2703
Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Class Size: 6,500
Opt-Out Filing Rate: 1.5%
No. of Checks Issued: 6,403
Language Translation Services: Yes
Settlement Website: Static Website
Notice Procedures: Mail

Undeliverable Mail Rate: 8%
Payment Option: Check
Unclaimed Funds: SCO
Postage Total: $11,363.54
Grand Total: $62,666.53
CPT'S DISCOUNTED FEE: $45,000.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs 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, ensuring 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. CPT will translate the court Notice, opt-out form, and objective form into Spanish. The Settlement Website will publish the complete notice and all relevant settlement documents for downloading.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	$95.00	7	$665.00
Programming: Data Base Setup	$150.00	7	$1,050.00
Spanish Translation	$1,200.00	1	$1,200.00
Static Website	$500.00	1	$500.00
		Sub Total:	**$3,415.00**

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)	$350.00	1	$350.00
XML Lex ID Skip Trace	$0.50	650	$325.00
Print & Mail Notice Packets	$1.50	6,500	$9,750.00
First-Class Postage (up to 2 oz.)*	$0.64	6,500	$4,160.00
		Sub Total:	**$14,775.00**

*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, 8% of the notices would be returned as undeliverable. Upon notification from USPS, CPT will conduct a skip trace to try to find a current address. As a result, 70% of the undeliverable notice packets are remailed.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	$60.00	9	$540.00
Update Undeliverable Mail Database	$0.50	520	$260.00
Skip Trace for Best Address	$0.50	463	$231.50
Print & Remail Notice Packets	$1.50	364	$546.00
First-Class Postage (up to 2 oz.)	$0.88	364	$320.32
		Sub Total:	**$1,897.82**

OPT-OUT PROCESSING

CPT will thoroughly examine the submitted responses to identify and remove any duplicates, fraudulent entries, or other invalid submissions. CPT will handle the processing and verification of any opt-outs, objections, and other responses submitted by class members. Deficient opt-outs will be sent a notice by mail, offering the class member a chance to cure.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	$150.00	8	$1,200.00
Project Manager: Validate Opt-Outs	$95.00	1	$95.00
Clerical Staff	$60.00	2	$120.00
Opt-Out Processing	$2.50	98	$243.75
Print & Mail Deficiency/Dispute Notices	$1.50	5	$7.50
First-Class Postage (up to 1 oz.)	$0.68	5	$3.40
Review & Process Deficiency Responses	$10.00	3	$30.00
		Sub Total:	**$1,699.65**

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	1,300	$3,900.00
		Sub Total:	**$4,200.00**

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	$150.00	1	$150.00
Department Manager: Analysis & Reporting	$95.00	3	$285.00
IRS SSN Verification	$0.10	6,403	$640.25
		Sub Total:	**$1,075.25**

DISTRIBUTION SERVICES

CPT will establish and oversee the administration of the 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF) for a maximum duration of one year following the distribution of funds. Once approved, CPT will conduct the essential calculations and distribute funds. CPT will send a magnetic ink character recognition (MICR) check to class members who are eligible. CPT employs a Payee Positive Pay System to reconcile cashed checks and performs monthly account reconciliations for the QSF. Undeliverable checks are skip traces to determine a current address and are remailed accordingly. Requests for check reissues will be processed continuously and mailed to class members. All Class Members who do not cash their check will be sent a check reminder postcard.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	$150.00	3	$450.00
Project Supervisor: Review of Distribution	$150.00	9	$1,350.00
Project Manager: Correspondence w/Parties	$95.00	5	$475.00
Programming: Setup & Printing of Checks	$150.00	6	$900.00
Obtain EIN, Setup QSF/Bank Account	$150.00	3	$450.00
Print & Mail Notice, Checks & W2/1099	$2.25	6,403	$14,405.63
First-Class Postage (up to 1 oz.)	$0.64	6,403	$4,097.60
Check Reminder Postcard	$0.50	4,802	$2,400.94
Postage for Check Reminder Postcard	$0.51	4,802	$2,448.96
Project Supervisor: Account Reconciliation	$150.00	12	$1,800.00
Update Undeliverable Checks Database	$0.50	320	$160.06
Skip Trace for Best Address	$0.75	320	$240.09
Remail Undeliverable Checks	$2.50	291	$727.50
First-Class Postage (up to 1 oz.)	$0.68	291	$197.88
Re-Issue Checks as Required	$5.00	257	$1,285.00
First-Class Postage (up to 1 oz.)	$0.68	257	$174.76
		Sub Total:	**$31,563.42**

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	1,345	$201.75
Project Manager: Reporting & Remittance	$95.00	2	$190.00
Project Supervisor: Review of Report	$150.00	1	$150.00
Certified Mail Report to SCO	$8.64	1	$8.64
Add'l Account Recons	$150.00	3	$450.00
		Sub Total:	**$1,000.39**

Total Administration Costs:	**$62,666.53**
Courtesy Discount:	***-$17,666.53***
CPT'S DISCOUNTED FLAT FEE:	**$45,000.00**

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

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) "**Approved Bank**" means a financial institution insured by the Federal Deposit Insurance Corporation.
   c) "**Case**" means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
   d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
   e) "**Client**" means collectively Plaintiff Counsel and Defense Counsel.
   f) "**Client Content**" means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
   g) "**Client Data**" means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
   h) "**Class Member**" means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
   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 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) "**Order**" means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
   o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
   p) "**Plaintiff**" means the named party and/or parties in the Case who are bringing the action.
   q) "**Plaintiff Counsel**" means the attorney of record for plaintiff Class Members in the Case.
   r) "**Products**" means any and all CPT Services, and work products resulting from Services.
   s) "**Qualified Settlement Fund**" means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
   t) "**Service**" means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund 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.
   u) "**Software**" means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
   v) "**Settlement**" means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
   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 Class Members.
   x) "**Term**" means the term of the Agreement, as set forth in the Order.
   y) "**Transmission Methods**" means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
   z) "**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 Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disenabling codes which could adversely affect the Client 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. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client 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 Client.
5. Mutual Obligations.
   a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.

6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. 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 stated within the proposal is good for 90 Days. 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 Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order 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% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. 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.

8. Term and Termination.

a) Term. The Term is set forth in the Order. 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 Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client 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.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

a) Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

b) Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.

10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client 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 Client 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 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 CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT 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 both 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 and regulations, 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 first written above 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 shall notify Client of its use of any subcontractors to perform Client-specific Services. 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) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 18

simpluris

Reference No. 20240314-PJI-06

March 14, 2024

Emily Houng Ly
The Spivak Law Firm
1801 Century Park East, 25th Floor
Los Angeles, CA 90067

RE: ***Storm v. O'Reilly***

Dear Emily,

Thank you for this opportunity to provide a quote for your above-captioned settlement. Using the parameters you described, Simpluris' total estimated cost is $47,961. As a courtesy, we are offering a $4,000 discount, for a discounted total of $43,961.

Please let me know if you have questions. I look forward to this opportunity to work together.

Sincerely yours,

PATRICK J. IVIE
Chief Revenue Officer

m: 310-995-6455
o: 714-975-5260
e: pivie@simpluris.com

simpluris

3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104
www.simpluris.com

Estimate Number:	20240314-PJI-06	Prepared By:	Patrick J. Ivie
Estimate Date:	3/14/2024	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	6/12/2024	Email:	pivie@simpluris.com

Attorney Contact		Opposing Counsel Contact	
Attorney:	**Emily Houng Ly**	Attorney:	
Firm:	The Spivak Law Firm	Firm:	
Email:	emily@spivaklaw.com	Email:	

Case Name: ***Storm v. O'Reilly - Class and PAGA Settlement***

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that
(1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate; (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	6,500	Undeliverable Rate:	10%
Claims Rate:	N/A	Mail Skip Trace Success Rate:	85%
Opt-out Rate:	1%	Call Rate:	4%
Language(s) for Communication	EN/SP	Average Call Length:	3 Minutes
Reminder Mailing:	Yes	Fund Distribution:	Simpluris
Unclaimed Funds:	Escheat	Number of Distributions:	1
State(s):	CA	Tax Year(s):	1
Length of Administration:	9 Months		

Case Setup

- Undertake postings on Simpluris website of key documents as ordered by the Court (e.g. orders and the Settlement Agreement)
- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	$110.00	4	$440.00
Case Document Web Postings	$250.00	1	$250.00
Database Manager - Initial Data Analysis	$125.00	3	$375.00
		Total:	**$1,065.00**

Notice and Communications

- 14-page Packet: Notice, Opt Out Form, Objection Form, and Dispute Form, sent via First Class US Mail, in English and Spanish
- Spanish Translation of the class Notice
- Single Postcard Reminder Mailing

Category	Unit Value	# of Units	Total
Spanish Translation assuming 6,500 words	$0.25	6,500	$1,625.00
Bilingual Notice Packet - assuming 28 images	$2.25	6,500	$14,625.00
Postage	$0.57	6,500	$3,705.00
NCOA/CASS/LACS	$0.25	6,500	$1,625.00
Undeliverable Processing and Skip Trace	$0.50	650	$325.00
Remail Notice (assuming 85% skip trace success)	$3.00	553	$1,657.50
Remail Postage	$0.57	553	$314.93
Single Postcard Reminder Mailing	$0.18	6,500	$1,170.00
Postage	$0.47	6,500	$3,055.00
Mailing Supervisor	$50.00	5	$250.00
		Total:	**$28,352.43**

Contact Center

- Establish case-specific toll-free number and 24/7 IVR
- Assuming 3-minute calls

Category	Unit Value	# of Units	Total
IVR Call Center Setup	$450.00	1	$450.00
IVR Monthly Maintenance	$100.00	9 Months	$900.00
IVR (includes toll-free number charges)	$15.00	13	$195.00
		Subtotal	**$1,545.00**

Administration

- Process incoming class and counsel communications, disputes, opt-outs, and objections

Category	Unit Value	# of Units	Total
Database Manager	$125.00	4	$500.00
Project Manager	$110.00	4	$440.00
Disputes Processing	$1.50	325	$487.50
Opt-out Processing	$3.50	65	$227.50
Reporting to Counsel (hours)	$100.00	6	$600.00
		Total:	**$2,255.00**

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Uncashed checks will be sent to the State Unclaimed Property Fund
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Setup Banking Account/QSF	$675.00	1	$675.00
Disbursement Data Preparation	$125.00	4	$500.00
Disbursement Manager - Data Validation	$90.00	4	$360.00
QSF Monthly Reconciliation and Maintenance	$100.00	9	$900.00
Print & Mail Distribution Check with W2 and 1099	$0.65	6,500	$4,225.00
Postage	$0.57	6,500	$3,705.00
Process Returned Checks (assuming 5%)	$0.25	325	$81.25
Skip Trace Search Undeliverable Checks	$0.50	325	$162.50
Remail Checks (includes postage)	$1.60	325	$520.00
Escheat Uncashed Checks	$500.00	1	$500.00
QSF Reporting and Final Declaration	$500.00	1	$500.00
QSF Annual Tax Reporting and Reconciliation	$1,350.00	1	$1,350.00
Distribution Manager	$90.00	4	$360.00
		Total:	**$13,838.75**

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	$125.00	3	$375.00
Clerical-Clean Up Any Misc.	$50.00	4	$200.00
Project Manager-Wrap-up Final Issues	$110.00	3	$330.00
		Total:	**$905.00**

Total Estimated Cost of Administration:	**$47,961**
Less Client Courtesy Discount:	**-$4,000**
Discounted Total:	**$43,961**

Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order,settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understoodthat such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and compensation for services Simpluris performs for financial institutions to be eligible for FDIC deposit insurance. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

10. Rights in Data: Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

11. Electronic Communications: During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

12. Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

13. Waiver: Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

14. Termination: Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.

17. Confidentiality: Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

18. Indemnification: Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, in connection with , or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.

19. Severability: If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Database Administration: Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

21. Entire Agreement: These Terms and Conditions together with the Proposal constitutes the entire agreement between the parties with respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

EXHIBIT 19

PHOENIX
CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS	
Class Members	6,500
Opt Out Rate	1%
Opt Outs Received	84
Total Class Claimants	6,416
Subtotal Admin Only	**$41,752.30**
Flat Fee Total	**$40,000.00**

For 6,500 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

March 14, 2024

Case: Storm v. O'REILLY, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Emily Houng 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 **6,500** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of $150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Manager	$100.00	4	$400.00
Programming Database & Setup	$100.00	4	$400.00
Toll Free Setup*	$100.00	1	$100.00
Call Center & Long Distance	$1.25	910	$1,137.50
NCOA (USPS)	$1,300.00	1	$1,300.00
		Total	**$3,337.50**

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website			
Project Action	**Rate**	**Hours/Units**	**Line Item Estimate**
Notice Packet Formatting	$100.00	2	$200.00
Language Translation	$1,000.00	1	$1,000.00
Data Merge & Duplication Scrub	$0.10	6,500	$650.00
Notice Packet & Opt-Out Form	$1.20	6,500	$7,800.00
Estimated Postage (up to 2 oz.)*	$0.81	6,500	$5,265.00
Static Website	$200.00	1	$200.00
Check Cashing Reminder Postcard Postage Included	$0.60	610	$366.00
		Total	**$15,481.00**

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.

PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Case Associate	$55.00	4	$220.00
Skip Tracing Undeliverables	$1.00	975	$975.00
Remail Notice Packets	$1.00	972	$972.00
Estimated Postage	$0.87	972	$845.64
Programming Undeliverables	$50.00	2	$100.00
		Total	**$3,112.64**

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Database	$150.00	2	$300.00
Non Opt-Out Processing	$200.00	1	$200.00
Case Associate	$55.00	7	$385.00
Deficiency & Dispute Letters	$6.00	84	$504.00
Case Manager	$85.00	4	$340.00
		Total	**$1,729.00**

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Calculations	$135.00	2	$270.00
Disbursement Review	$135.00	3	$405.00
Programming Manager	$95.00	5	$475.00
QSF Bank Account & EIN	$135.00	1	$135.00
Check Run Setup & Printing	$135.00	15	$2,025.00
Mail Class Checks *	$0.70	6,416	$4,491.20
Estimated Postage	$0.64	6,416	$4,106.24
		Total	**$11,907.44**

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for dowloading tax forms from PHX secure portal

PHOENIX
CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Case Supervisor	$115.00	3	$345.00
Remail Checks (Postage Included)	$2.00	1,347	$2,694.72
Case Associate	$55.00	5	$275.00
Reconcile Uncashed Checks	$85.00	5	$425.00
Conclusion Reports	$115.00	3	$345.00
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)	$1,500.00	1	$1,500.00
		Total	**$6,184.72**

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibilty.

Estimate Total: $41,752.30

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 20

State of California
Labor and Workforce Development Agency / Department of Industrial Relations

Private Attorneys General Act (PAGA) - Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : * 831908-21

Please enter only the numbers after "LWDA-CM-" in the following format, "XXXXXXXXX-XX".
Search for PAGA Case number

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name * David

Your Last Name * Spivak

Your Email Address * emily@spivaklaw.com

Your Street Name, Number and Suite/Apt * 8605 Santa Monica Bl, PMB

Your Mobile Phone Number

Your City * West Hollywood

Your Work Phone Number

Your State * California

Your Zip/Postal Code * 90069

Court and Hearing Information

Court *	Court Case Number *	Hearing Date (if any)
US District Court Southern	3:21-cv-01120-AHG	

Hearing Time	Hearing Location	Number of aggrieved employees *
	Courtroom 2125	5,750

Gross settlement amount *	Gross penalty amount *	Penalties to LWDA *
4.100,000	410,000	307,500

Date of proposed settlement *

05/24/2024

Proposed Settlement and Other Documents

Proposed Settlement *

Choose File 24.05.24 FUL...inal-Clean.pdf

Other Attachment (if any)

Choose File 24.05.24 MX ... - NOTICE.pdf

Other Attachment (if any) Remove

Choose File 24.05.24 MX ...ICH - MPA.pdf

Other Attachment (if any) Remove

Choose File 24.05.24 MX ...CL SPIVAK.pdf

Other Attachment (if any) Remove

Choose File 24.05.24 MX ...CL HAINES.pdf

Other Attachment (if any) Remove

Choose File 24.05.24 MX ...CL PIAZZA.pdf

Other Attachment (if any) Remove

Choose File 24.05.24 MX ... - ORDER.pdf

Add Another Attachment

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☑ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Previous Page Submit

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

Click Here to Search Case

SPIVAK LAW

Emily Houng Ly <emily@spivaklaw.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov> Fri, May 24, 2024 at 4:19 PM
To: emily@spivaklaw.com

05/24/2024 04:18:44 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement
If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) - Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : * 841025-21

Please enter only the numbers after "LWDA-CM-" in the following format, "XXXXXXXXX-XX".
Search for PAGA Case number

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name * David

Your Last Name * Spivak

Your Email Address * emily@spivaklaw.com

Your Street Name, Number and Suite/Apt * 8605 Santa Monica Bl, PMB

Your Mobile Phone Number

Your City * West Hollywood

Your Work Phone Number

Your State * California

Your Zip/Postal Code * 90069

Court and Hearing Information

Court *	Court Case Number *	Hearing Date (if any)
US District Court Southern	3:21-cv-01120-AHG	

Hearing Time	Hearing Location	Number of aggrieved employees *
	Courtroom 2125	5,750

Gross settlement amount *	Gross penalty amount *	Penalties to LWDA *
4.100,000	410,000	307,500

Date of proposed settlement *

Proposed Settlement and Other Documents

Proposed Settlement *

Choose File 24.05.24 FUL...inal-Clean.pdf

Other Attachment (if any)

Choose File 24.05.24 MX ... - NOTICE.pdf

Other Attachment (if any) Remove

Choose File 24.05.24 MX ...ICH - MPA.pdf

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Choose File 24.05.24 MX ...CL HAINES.pdf

Other Attachment (if any) Remove

Choose File 24.05.24 MX ...CL PIAZZA.pdf

Other Attachment (if any) Remove

Choose File 24.05.24 MX ... - ORDER.pdf

Add Another Attachment

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

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☑ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

Previous Page Submit

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Click Here to Search Case

SPIVAK LAW

Emily Houng Ly <emily@spivaklaw.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov> Fri, May 24, 2024 at 4:30 PM
To: emily@spivaklaw.com

05/24/2024 04:29:15 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement
If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 21

Case title: O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case nos.: 3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject: **Data**

Important Dates	
Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Thursday, July 5, 2018
Lab.Code § 203 (waiting time penalties) period begins:	Friday, July 5, 2019
Lab.Code § 2699 (civil penalties) period begins:	Monday, May 11, 2020
Pipich LWDA Notice:	Tuesday, May 11, 2021
Pipich Lawsuit:	Friday, July 16, 2021
Storm Class Action Lawsuit:	Tuesday, July 5, 2022
Lab.Code § 226 (wage statement penalties) period begins:	Monday, July 5, 2021

numbers highlighted in green were provided by O'Reilly
numbers highlighted in yellow were calculated based on the sample records

Classes / Groups sizes	Direct Hires	y Emplo	Total
UCL Class Members:	3,983	1,767	5,750
UCL Workweeks:	282,086	7,451	289,537
Waiting Time Penalties Class Members:			4,353
PAGA Aggrieved Employees:	3,149	1,767	4,916
PAGA Wage Statements/Pay Periods:	82,845	7,451	90,296

Averages	
Average Hourly Rate:	$ 19.07
Average Overtime Rate:	$ 28.61
Average Doubletime Rate:	$ 38.14
Average Work Hours Per Day:	8.10
Average Work Hours Per Week:	36.30
Average Workdays Per Week:	4.50
Workdays to Calendar Days (%):	64.29%
Pay cycle:	bi-Weekly (26 / year) (Temp agency employees were paid on a weekly basis)
Premium Wages Paid For 5% Sample:	$ 5,547.63

Case title:			O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.:			3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject:			**Unpaid wages**
Authority:			Lab.Code §§ 510, 1194, 1194.2, and 1198
Average Hourly Rate:		$	19.07
Average Overtime Rate:		$	28.61
Unpaid Hours Per Workday:	inutes of unpaid w		0.017
Average Workdays Per Week:			4.50
Actionable Workweeks:			289,537
Interest Rate:			10%
Unpaid Wages:		$	683,008.67

Case title:	O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.:	3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject:	**Unprovided Meal Periods**
Authority:	Lab.Code §§ 226.7, 512, and 1198

Average Hourly Rate:	$	19.07
Average Workdays Per Week:		4.50
Actionable Workweeks:		289,537
Actionable Workdays:		1,302,917
>>Percentage qualifying for meal periods (5+ shifts):		95.41%
Violation Rate (%)		10%
Meal Periods Premium Paid:	$	110,952.60
Unpaid Meal Period Premium Wages:	$	2,259,663.19

Case title:	O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.:	3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject:	**Unprovided Rest Periods**
Authority:	Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	$	19.07
Average Workdays Per Week:	$	4.50
Actionable Workweeks:	$	289,537.00
Actionable Workdays:		1,302,917
>>Percentage qualifying for rest periods(3.5+ shifts):		98.60%
Violation Rate (%)		10%
Rest Period Premium Wages:	$	2,449,876.50

Case title: O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.: 3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject: **Unreimbursed expenses**
Authority: Lab.Code § 2802

PPE		
Cost of PPE Per Class Member:	$	15.00
UCL Class Members:		5,750
Interest Rate:		10%
Violation Rate:		20%
Unreimbursed PPE:	$	18,975.00

Case title:	O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.:	3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject:	**Waiting Time / Final Wages**
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		4,353
Days waiting:		30
Average Hourly Rate:	$	19.07
Average Overtime Rate:	$	28.61
Average Work Hours Per Day:		8.10
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.10
Waiting time penalties:	$	20,296,363.10
Wilffulness/lack of good faith	$	-

Case title: O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.: 3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject: **Wage Statement Penalties**
Authority: Lab.Code § 226

Wage Statement Class Members:		4,312
Wage Statement Class Wage Statements:		78,609
Initial Penalty:	$	50.00
Subsequent Penalty:	$	100.00
Statutory wage statement penalties:	**$**	**7,645,300.00**
Intent showing?	$	-

Case title: O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.: 3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Pay periods	Total
Unpaid Minimum Wages (§ 1197):	§ 1197	$ 100.00	90,296	$ 9,029,600.00
Unpaid Overtime Wages/Unprovided Meal Periods (§§ 510/512):	§ 558	$ 50.00	90,296	$ 4,514,800.00
Unauthorized Rest Periods (§ 1198):	§ 2699	$ 100.00	90,296	$ 9,029,600.00
Unreimbursed Business Expenses (§ 2802):	§ 2699	$ 100.00	90,296	$ 9,029,600.00
Improper Paystubs (§ 226):	§ 2699	$ 100.00	90,296	$ 9,029,600.00
Untimely Wages (§§ 201-204):	§ 2699	$ 100.00	90,296	$ 9,029,600.00
Total:				**$ 49,662,800.00**

Case title: O'Reilly Auto Enterprises, LLC and Express Services, Inc. Actions
Case no.: 3:21-CV-01120-L-JLB, 5:22-cv-01510 FLA (MARx), CVRI2202748
Page subject: **Totals**
Authority: Various

Restitution		
Unpaid Wages:	$	683,008.67
Unpaid Meal Period Premium Wages:	$	2,259,663.19
Rest Period Premium Wages:	$	2,449,876.50
Unreimbursed PPE:	$	18,975.00
Restitution subtotal:	$	5,411,523.36
Penalties		
Waiting time penalties:	$	-
Statutory wage statement penalties:	$	-
Unpaid Minimum Wages (§ 1197):civil penalties:	$	9,029,600.00
Unpaid Overtime Wages/Unprovided Meal Periods (§§ 510/512):civil penalties:	$	-
Unauthorized Rest Periods (§ 1198):civil penalties:	$	-
Unreimbursed Business Expenses (§ 2802):civil penalties:	$	-
Improper Paystubs (§ 226):civil penalties:	$	-
Untimely Wages (§§ 201-204):civil penalties:	$	-
Penalties subtotal:	$	9,029,600.00
Grand total:	**$**	**14,441,123.36**
Settlement	$	4,100,000.00
		28.39%

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

Attorneys for Plaintiffs and all others similarly situated
(Additional attorneys for parties on following page)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiffs,

vs.

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company; Express Services, Inc., a Colorado corporation dba Express Employment Professionals; and DOES 2–50, inclusive,

Defendants.

Case No. 3:21-cv-01120-AHG

DECLARATION OF WALTER L. HAINES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Action filed: July 16, 2021
Hearing Court: 2125, The Honorable Allison H. Goddard

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Express Services, Inc.

DECLARATION OF WALTER L. HAINES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, WALTER L. HAINES, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiffs Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez (collectively "Plaintiffs") in their lawsuit against Defendants O'Reilly Auto Enterprises, LLC ("O'Reilly") and Express Services, Inc. ("Express") (collectively "Defendants"). I am a member in good standing of the State Bar of California. I make this Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. I make this Declaration based on my personal knowledge and if called to testify I could and would competently testify to the matters contained in this Declaration.

2. I am a highly experienced class action counsel specializing in actions of this nature. I have been practicing law for over 40 years and I am highly experienced in actions of this nature. I am the most senior attorney at my firm, United Employees Law Group, and worked on the litigation of this matter. I formed United Employees Law Group in 2005, primarily to represent employees in their wage claims. I have represented over 1,500 clients in wage and hour disputes of which more than 300 cases were class actions with settlements totaling over $400,000,000. These class action cases include Fortune 500 companies such as Pepsi, Intel, Home Depot, Kaiser, Wells Fargo, Bank of America, Cisco Systems, First American Title Co., Yahoo!, WellPoint, Inc., Sun Microsystems, and Kaiser Foundation Hospitals.

3. I have no conflicts of interest with the class or with the Class Representatives. I am not related to the representative Plaintiffs. I have not previously represented Defendants in any matter. I do not represent opposing factions within the class in that all claims are predicated upon the same theories of liability and benefit all class members equally. In sum, I am well-suited to act as

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Class Counsel and will continue to vigorously represent the interests of the class.

4. I have negotiated many wage and hour class settlements, including many involving the same issues presented here. I believe that the Settlement is a fair and reasonable settlement in light of the complexities of the case and uncertainties of class certification and litigation, and a fair result for the Class Members.

I declare under the penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed on May 23rd, 2024 at Los Angeles, California.

WALTER L. HAINES,
Declarant

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Attorneys for Plaintiffs and all others similarly situated
(Additional attorneys for parties on following page)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiffs,

vs.

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company; Express Services, Inc., a Colorado corporation dba Express Employment Professionals; and DOES 2–50, inclusive,

Defendants.

Case No. 3:21-cv-01120-AHG

DECLARATION OF ALEXANDRA K. PIAZZA ON BEHALF OF BERGER MONTAGUE PC IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT

Action filed:	June 16, 2021
Ctrm:	2125, The Honorable Allison H. Goddard

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Attorneys for Defendant,
Express Services, Inc.

I, Alexandra K. Piazza, hereby declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a member in good standing of the bars of the State of California and State of New Jersey, the District of Columbia, and the Commonwealth of Pennsylvania, and I am admitted to this Court. I respectfully submit this declaration on behalf of Berger Montague PC ("Berger Montague") in support of Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement.[1]

2. Berger Montague, along with The Spivak Law Firm and United Employees Law Group, PC, are the proposed Class Counsel for Plaintiffs and the proposed Class as defined in the Parties' Settlement Agreement.

3. I have no conflicts of interest with the proposed Class or with the Class Representatives. I am not related to the representative Plaintiffs. I have not represented Defendants. I do not represent opposing factions within the Class in that all claims are predicated upon the same theories of liability and benefit all class members equally. In sum, I am well-suited to act as Class Counsel and will continue to vigorously represent the interests of the Class.

4. Berger Montague concentrates its practice in complex civil litigation and class action litigation in federal and state courts and is one of the premier litigation law firms in America. Attached hereto as Exhibit A is a copy of our Firm's resume.

5. Berger Montague employs over 100 attorneys plus a large support staff and maintains offices in Philadelphia, Chicago, Minneapolis, San Diego, San Francisco, Toronto, and Washington, D.C. Our Firm has played lead roles in major litigation and class action cases for over 54 years, resulting in recoveries totaling well over $30 billion for our firm's clients and the classes they have represented.

[1] All capitalized terms used in this Declaration have the meanings ascribed to them in the Parties' Settlement Agreement.

6. I am a Shareholder in Berger Montague's Employment & Unpaid Wage Group, and I have dedicated my career to representing workers throughout the country in complex class and collective actions arising under federal and state laws. I have extensive experience in all aspects of litigation, mediation, arbitration, and settlement, and I have been appointed class counsel in dozens of actions nationwide. In 2021 and 2023, I was named in the *Best Lawyers* list of "Ones to Watch." In 2022 and 2023, I was named by Thomson Reuters as a "Rising Star."

7. I, and my colleagues in the Employment Department at Berger Montague, have an extensive background in litigation on behalf of employees. We have served and currently serve as lead or co-lead counsel in many employment-related class and collective action cases across the country, brought under the Fair Labor Standards Act ("FLSA") and related state wage laws, including unpaid overtime compensation cases similar to this case. Indeed, Berger Montague has recently been appointed class counsel in several litigated wage and hour class actions. *See, e.g., Portillo, et al. v. National Freight, Inc*., 336 F.R.D. 85, 93 (D.N.J. 2020) (appointing Berger Montague as class counsel and holding that it is indisputably "qualified, experienced, and able to conduct the litigation"); *Fenley v. Wood Group Mustang, Inc.*, 325 F.R.D. 232 (S.D. Ohio 2018) (appointing Berger Montague as class counsel in a class and collective action on behalf of oil and gas pipeline inspectors who were paid on a day rate basis); *Rivet v. Office Depot, Inc*., 207 F. Supp. 3d 417, 432 (D.N.J. 2016) (appointing Berger Montague and co-counsel as class counsel in a class and collective action on behalf of assistant store managers).

8. Berger Montague has also been appointed class counsel in numerous class and collective action settlements securing unpaid wages in California and around the country. *See, e.g., Brown, et. al., v. Synctruck LLC, et. al.*, Contra Costa Sup. Ct., No. MSC18-02499 (2023); *Shaw, et al. v. AMN Services, LLC, et al.*, No.

3:16-cv-02816 (N.D. Cal. May 31, 2019); *Scolaro v. RightSourcing, Inc.*, No. 8:16-cv-01083, (C.D. Cal. June 26, 2017); *see also Easterday v. USPack Logistics LLC*, No. 115-cv-07559-RBK-AMD, 2023 WL 4398491, at *4 (D.N.J. July 6, 2023) (appointing Berger Montague and co-counsel as class counsel in wage and hour settlement, and holding the firms have "extensive expertise in wage and hour class actions"); *Cherry v. Baptist Mem. Health. Care Corp.*, No. 2:22-cv-2179, Dkt. No. 40 (May 5, 2023 W.D. Tenn.) (approving collective action settlement and noting "[t]he Plaintiffs' attorneys are members of a highly regarded employment law firm with extensive experience in negotiating and litigating Fair Labor Standards Act cases"); *Anstead, et al. v. Ascension Health, et al.*, No. 3:22-cv-2553-MCR-HTC (N.D. Fla. Mar. 27, 2023); *Jean-Pierre v. J&L Cable TV Servs, Inc.*, No. 1:18-cv-11499-MLW (D. Mass. Aug. 31, 2021); *Holbert v. Waste Management, Inc.*, No. 2:18-cv-02649-CMR (E.D. Pa. Aug. 7, 2019); *Oshikoya, et al. v. Leidos Health, LLC*, No. 1:17-cv-3237-RLM-DM (S.D. Ind. July 10, 2019); *Grimsley v. Environmental Management Specialists*, No. 2:15-cv-2371 (S.D. Ohio Mar. 29, 2017); *Dunkel v. Warrior Energy Services, Inc.*, No. 2:13-cv- 695-MRH (W.D. Pa. Apr. 18, 2016); *Ciamillo v. Baker Hughes Inc.*, No. 3:14-cv-00081-RRB (D. Alaska June 22, 2015).

9. Practice in the area of wage and hour class action and PAGA litigation requires skills, knowledge, and experience in two distinct subsets of the law: (a) the substantive employment law applicable to such cases; and (b) the substantive and procedural aspects of prosecuting class actions under Rule 23 of the Federal Rules of Civil Procedure and PAGA actions under Labor Code §§ 2698, *et seq.* Expertise in one of these areas does not necessarily translate into expertise in the other. Plaintiffs' counsel in such cases—to be successful—must have deep expertise in both. The issues presented in this case required more than just a general appreciation of wage and hour law or class action/PAGA action procedure, as these

areas of practice are often changing. Here, Class Counsel's knowledge and expertise was utilized to drill down on and analyze the key issues and ultimately, was leveraged to reach a fair and reasonable settlement in an efficient manner.

10. I believe that the proposed Settlement Agreement provides an excellent settlement for Plaintiffs, the Aggrieved Employees, and the Class Members with respect to the claims alleged in the Fourth Amended Complaint.

Dated: May 16, 2024

Alexandra K. Piazza

Alexandra K. Piazza

EXHIBIT A

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About Berger Montague

Berger Montague is a full-spectrum class action and complex civil litigation firm, with nationally known attorneys highly sought after for their legal skills. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the firm has played a principal or lead role.

The *National Law Journal* selected Berger Montague in 12 out of 14 years (2003-2005, 2007-2013, 2015-2016) for its "Hot List" of top plaintiffs-oriented litigation firms in the United States. The select group of law firms recognized each year had done "exemplary, cutting-edge work on the plaintiffs' side." The *National Law Journal* ended its "Hot List" award in 2017 and replaced it with "Elite Trial Lawyers," which Berger Montague has won from 2018-2021. The firm has also achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell* and was ranked as a 2021 "Best Law Firm" by *U.S. News - Best Lawyers*.

Currently, the firm consists of over 90 lawyers; 18 paralegals; and an experienced support staff. Few firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

History of the Firm

Berger Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm's complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger Montague has established new law and forged the path for recovery.

The firm has been involved in a series of notable cases, some of them among the most important in the last 50 years of civil litigation. For example, the firm was one of the principal counsel for

plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately $2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980's. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of $5 billion against Exxon, later reduced by the U.S. Supreme Court to $507.5 million. Berger Montague was lead counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered in excess of $200 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger Montague was also lead class counsel and lead trial counsel in the *Cook v. Rockwell International Corporation* litigation arising out of a serious incident at the Rocky Flats nuclear weapons facility in Colorado.

Additionally, in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a $1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm also played an instrumental role in bringing about a $4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

Diversity, Equity and Inclusion Initiatives

Berger Montague not only supports the idea of its Diversity, Equity and Inclusion ("DEI") initiatives, it is a part of the DNA and fabric of the firm—internally amongst the Berger Montague family and in the way we practice law with co-counsel, opposing counsel, the courts, and with our clients. Through our DEI initiatives, Berger Montague actively works to increase diversity at all levels of our firm and to ensure that professionals of all races, religions, national origins, gender identities, ethnicities, sexual orientations, and physical abilities feel supported and respected in the workplace.

Berger Montague has a DEI Task Force with the leadership of the DEI Coordinator, Camille Fundora Rodriguez, and including, Candice J. Enders, Caitlin G. Coslett, Sophia Rios. Berger Montague has enacted a broad range of diversity and inclusion projects, including successful efforts to hire and retain attorneys and non-attorneys from diverse backgrounds and to foster an inclusive work environment, including through firmwide trainings on implicit bias issues that may impact the workplace.

Additionally, at Berger Montague women lead. Women comprise over 30% of Berger Montague's shareholders, well above the national average as reported by the National Association of Women Lawyers. Moreover, women at the firm are encouraged and have taken advantage of professional development support to bolster their trajectories into key participation and leadership roles, both within and outside the firm, including mentoring, networking, and educational opportunities for women across all career levels. As a result of these intentional policies and initiatives, women attorneys at Berger Montague are managing departments, running offices, overseeing major

administrative programs, generating new business, serving as first chair in trials, handling large matters, and holding numerous other leadership positions firmwide.

Berger Montague's commitment to DEI activities extends beyond our firm. For example, DEI Task Force members are involved in numerous community and professional activities outside of the firm. Representative activities include membership in and/or board or leadership positions with the Hispanic Bar Association, the Barristers' Association of Philadelphia, the Philadelphia Public School Board of Education, Court Appointed Special Advocates (CASA) of Philadelphia, Philadelphia Bar Association's Business Law Section's Antitrust Committee, Community Legal Services of Philadelphia, the Greater Philadelphia Chapter of the Pennsylvania ACLU, AccessMatters, After School Activities Partnerships, and Leadership Council on Legal Diversity. As such, Berger Montague's commitment to DEI has created an atmosphere in which the attorneys can share their gifts with the legal and greater communities from which they come.

Commitment to *Pro Bono*

Berger Montague attorneys commit their most valuable resource, their time, to charities, nonprofit organizations, and *pro bono* legal work. For over 50 years, Berger Montague has encouraged its attorneys to support charitable causes and volunteer in the community. Our lawyers understand that participating in *pro bono* representation is an essential component of their professional and ethical responsibilities.

Berger Montague is strongly committed to numerous charitable causes. Over his lengthy career, David Berger, the firm's founding partner, was prominent in a great many philanthropic and charitable enterprises, including serving as Honorary Chairman of the American Heart Association; a Trustee of the American Cancer Society; and a member of the Board of Directors of the American Red Cross. This tradition continues to the present.

Community Legal Services of Philadelphia, an organization that provides free legal advice and representation to low-income residents of Philadelphia, honored Berger Montague with its 2021 Champion of Justice Award for the firm's work leading a case against the IRS that succeeded in getting unemployed people their rightful benefits during the COVID-19 pandemic.

In prior years, Berger Montague received the Chancellor's Award presented by the Philadelphia Volunteers for the Indigent Program ("VIP"), which provides crucial legal services to more than 1,000 low-income Philadelphia residents each year. VIP relies on volunteer attorneys to provide *pro bono* representation for families and individuals. In 2009 and 2010, Berger Montague also received an award for our volunteer work with the VIP Mortgage Foreclosure Program.

Today, Berger Montague attorneys engage in *pro bono* work for many organizations, including:

- Public Interest Law Center of Philadelphia ("PILCOP")
- Community Legal Services of Philadelphia ("CLS")
- Philadelphia Legal Assistance
- Education Law Center

- Legal Clinic for the Disabled
- Support Center for Child Advocates
- Veterans Pro Bono Consortium
- AIDS Law Project of Philadelphia
- Center for Literacy
- National Liberty Museum
- Philadelphia Volunteers for the Indigent Program
- Philadelphia Mortgage Foreclosure Program

We are proud of our written *pro bono* policy that encourages and strongly supports our attorneys to get involved in this important and rewarding work. Many attorneys at Berger Montague have been named to the First District of Pennsylvania's Pro Bono Honor Roll.

Berger Montague also makes annual contributions to the Philadelphia Bar Foundation, an umbrella charitable organization dedicated to promoting access to justice for all people in the community, particularly those struggling with poverty, abuse, and discrimination.

The firm also has held numerous clothing drives, toy drives, food drives, and blood drives. Through these efforts, Berger Montague professional and support staff have donated thousands of items of clothing, toys, and food to local charities including the Salvation Army, Toys for Tots, and Philabundance, a local food bank. Blood donations are made to the American Red Cross. Berger Montague attorneys also volunteer on an annual basis at MANNA, which prepares and delivers nourishing meals to those suffering with serious illnesses.

Practice Areas and Case Profiles

Antitrust

In antitrust litigation, the firm has served as lead, co-lead or co-trial counsel on many of the most significant civil antitrust cases over the last 50 years, including *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (settlement of approximately $5.6 billion*), In re Namenda Direct Purchaser Antitrust Litigation* (recovery of $750 million), *In re Loestrin 24 Fe Antitrust Litigation* (recovery of $120 million), and *In re Domestic Drywall Antitrust Litigation* (settlements totaling $190.7 million).

Once again, Berger Montague has been selected by *Chambers and Partners* for its 2021 *Chambers USA* Guide as one of Pennsylvania's top antitrust firms. *Chambers USA 2021* states that Berger Montague's antitrust practice group is "a preeminent force in the Pennsylvania antitrust market, offering expert counsel to clients from a broad range of industries."

The Legal 500, a guide to worldwide legal services providers, ranked Berger Montague as a Top Tier Law Firm for Antitrust: Civil Litigation/Class Actions: Plaintiff in the United States in its 2021 guide and states that Berger Montague's antitrust department "has a flair for handling high-stakes plaintiff-side cases, regularly winning high-value settlements for clients following antitrust law violations."

- ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation:*** Berger Montague served as co-lead counsel for a national class including millions of merchants in the *Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* against Visa, MasterCard, and several of the largest banks in the U.S. (*e.g.*, Chase, Bank of America, and Citi). The lawsuit alleged that merchants paid excessive fees to accept Visa and MasterCard cards because the payment cards, individually and together with their respective member banks, violated the antitrust laws. The challenged conduct included, *inter alia*, the collective fixing of interchange fees and adoption of rules that hindered any competitive pressure by merchants to reduce those fees. The lawsuit further alleged that defendants maintained their conspiracy even after both Visa and MasterCard changed their corporate forms from joint ventures owned by member banks to publicly-owned corporations following commencement of this litigation. On September 18, 2018, after thirteen years of hard-fought litigation, Visa and MasterCard agreed to pay as much as approximately $6.26 billion, but no less than approximately $5.56 billion, to settle the case. This result is the largest-ever class action settlement of an antitrust case. The settlement received preliminary approval on January 24, 2019. The settlement received final approval on December 16, 2019, for approximately $5.6 billion.

- ***Contant, et al. v. Bank of America Corp., et al.:*** Berger Montague served as lead class counsel in the multistate indirect purchaser antitrust class action *Contant, et al. v. Bank of America Corp., et al.*, against 16 of the world's largest dealer banks. Plaintiffs alleged that the defendants colluded to manipulate prices on foreign currency ("FX") instruments, using a number of methods to carry out their conspiracies, including sharing confidential price and order information through electronic chat rooms, thereby enabling the defendants to coordinate pricing and eliminate price competition. As with prior bank rigging scandals involving conspiracies to manipulate prices on other financial instruments, the defendants' alleged conspiracy to manipulate FX prices was the subject of numerous governmental investigations as well as direct purchaser class actions brought under antitrust federal law. However, the *Contant* action was the first of such cases to bring claims under state indirect purchaser antitrust laws on behalf of state-wide classes of retail investors of those financial instruments and whose claims have never been redressed. On July 29, 2019, U.S. District Judge Lorna G. Schofield granted preliminary approval of a $10 million settlement with Citigroup and a $985,000 settlement with MUFG Bank Ltd. On July 17, 2020, the Court granted preliminary approval of three settlements with all remaining defendants for a combined $12.695 million. Each of the five settlements, totaling $23.63 million, received final approval on November 19, 2020.

- ***In re Dental Supplies Antitrust Litigation:*** Berger Montague served as co-lead counsel for a class of dental practices and dental laboratories in *In re Dental Supplies Antitrust Litigation*, a suit brought against Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company, the three largest distributors of dental supplies in the United States. On September 7, 2018, co-lead counsel announced that they agreed with defendants to settle on a classwide basis for $80 million. The settlement received final

approval on June 24, 2019. The suit alleged that the defendants, who collectively control close to 90 percent of the dental supplies and equipment distribution market, conspired to restrain trade and fix prices at anticompetitive levels, in violation of the Sherman Act. In furtherance of the alleged conspiracy, plaintiffs claimed that the defendants colluded to boycott and pressure dental manufacturers, dental distributors, and state dental associations that did business with or considered doing business with the defendants' lower-priced rivals. The suit claimed that, because of the defendants' anticompetitive conduct, members of the class were overcharged on dental supplies and equipment. In the 2019 Fairness Hearing, Judge Brian M. Cogan of the U.S. District Court for the Eastern District of New York said: "This is a substantial recovery that has the deterrent effect that class actions are supposed to have, and I think it was done because we had really good Plaintiffs' lawyers in this case who were running it."

- ***In re Domestic Drywall Antitrust Litigation:*** Berger Montague served as co-lead counsel on behalf of a class of direct purchasers of drywall, in a case alleging that the dominant manufacturers of drywall engaged in a conspiracy to fix drywall prices in the U.S. and to abolish the industry's long-standing practice of limiting price increases for the duration of a construction project through "job quotes." Berger Montague represented a class of direct purchasers of drywall from defendants for the period from January 1, 2012 to January 31, 2013. USG Corporation and United States Gypsum Company (collectively, "USG"), New NGC, Inc., Lafarge North America Inc., Eagle Materials, Inc., American Gypsum Company LLC, TIN Inc. d/b/a Temple-Inland Inc., and PABCO Building Products, LLC were named as defendants in this action. On August 20, 2015, the district court granted final approval of two settlements—one with USG and the other with TIN Inc.—totaling $44.5 million. On December 8, 2016, the district court granted final approval of a $21.2 million settlement with Lafarge North America, Inc. On February 18, 2016, the district court denied the motions for summary judgment filed by American Gypsum Company, New NGC, Inc., Lafarge North America, Inc., and PABCO Building Products. On August 23, 2017, the district court granted direct purchaser plaintiffs' motion for class certification. On January 29, 2018, the district court granted preliminary approval of a joint settlement with the remaining defendants, New NGC, Inc., Eagle Materials, Inc., American Gypsum Company LLC, and PABCO Building Products, LLC, for $125 million. The settlement received final approval on July 17, 2018, bringing the total amount of settlements for the class to $190.7 million.

- ***In re Currency Conversion Fee Antitrust Litigation:*** Berger Montague, as one of two co-lead counsel, spearheaded a class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of $336 million was approved in October 2009, with a Final Judgment entered in November 2009. Following the resolution of eleven appeals, the District Court, on October 5, 2011, directed distribution of the settlement funds to more than 10 million timely filed claimants, among the largest class of claimants in an antitrust consumer class action. A subsequent settlement with American Express increased the settlement amount to $386 million. (MDL No. 1409 (S.D.N.Y)).

- ***In re Marchbanks Truck Service Inc., et al. v. Comdata Network, Inc.:*** Berger Montague was co-lead counsel in this antitrust class action brought on behalf of a class of thousands of Independent Truck Stops. The lawsuit alleged that defendant Comdata Network, Inc. had monopolized the market for specialized Fleet Cards used by long-haul truckers. Comdata imposed anticompetitive provisions in its agreements with Independent Truck Stops that artificially inflated the fees Independents paid when accepting the Comdata's Fleet Card for payment. These contractual provisions, commonly referred to as anti-steering provisions or merchant restraints, barred Independents from taking various competitive steps that could have been used to steer fleets to rival payment cards. The settlement for $130 million and valuable prospective relief was preliminary approved on March 17, 2014, and finally approved on July 14, 2014. In its July 14, 2014 order approving Class Counsel's fee request, entered contemporaneously with its order finally approving the settlement, the Court described this outcome as "substantial, both in absolute terms, and when assessed in light of the risks of establishing liability and damages in this case."

- ***Ross, et al. v. Bank of America (USA) N.A., et al.:*** Berger Montague, as lead counsel for the cardholder classes, obtained final approval of settlements reached with Chase, Bank of America, Capital One and HSBC, on claims that the defendant banks unlawfully acted in concert to require cardholders to arbitrate disputes, including debt collections, and to preclude cardholders from participating in any class actions. The case was brought for injunctive relief only. The settlements remove arbitration clauses nationwide for 3.5 years from the so-called "cardholder agreements" for over 100 million credit card holders. This victory for consumers and small businesses came after nearly five years of hard-fought litigation, including obtaining a decision by the Court of Appeals reversing the order dismissing the case, and will aid consumers and small businesses in their ability to resist unfair and abusive credit card practices. In June 2009, the National Arbitration Forum (or "NAF") was added as a defendant. Berger Montague also reached a settlement with NAF. Under that agreement, NAF ceased administering arbitration proceedings involving business cards for a period of three and one-half (3.5) years, which relief is in addition to the requirements of a Consent Judgment with the State of Minnesota, entered into by the NAF on July 24, 2009.

- ***Johnson, et al. v AzHHA, et al.:*** Berger Montague was co-lead counsel in this litigation on behalf of a class of temporary nursing personnel, against the Arizona Hospital and Healthcare Association, and its member hospitals, for agreeing and conspiring to fix the rates and wages for temporary nursing personnel, causing class members to be underpaid. The court approved $24 million in settlements on behalf of this class of nurses. (Case No. 07-1292 (D. Ariz.)).

The firm has also played a leading role in cases in the pharmaceutical arena, especially in cases involving the delayed entry of generic competition, having achieved over $2 billion in settlements in such cases over the past decade, including:

- ***In re: Namenda Direct Purchaser Antitrust Litigation:*** Berger Montague is co-lead counsel for the class in this antitrust action brought on behalf of a class of direct purchasers of branded and/or generic Namenda IR and/or branded Namenda XR. It settled for $750 million on the very eve of trial. The $750 million settlement received final approval on May 27, 2020, and is the largest single-defendant settlement ever for a case alleging delayed generic competition. (Case No. 15-cv-7488 (S.D.N.Y.)).

- ***King Drug Co. v. Cephalon, Inc.:*** Berger Montague played a major role (serving on the executive committee) in this antitrust class action on behalf of direct purchasers of the prescription drug Provigil (modafinil). After nine years of hard-fought litigation, the court approved a $512 million partial settlement, then the largest settlement ever for a case alleging delayed generic competition. (Case No. 2:06-cv-01797 (E.D. Pa.)). Subsequent non-class settlements pushed the total settlement figure even higher.

- ***In re Aggrenox Antitrust Litigation:*** Berger Montague represented a class of direct purchasers of Aggrenox in in an action alleging that defendants delayed the availability of less expensive generic Aggrenox through, *inter alia*, unlawful reverse payment agreements. The case settled for $146 million. (Case No. 14-02516 (D. Conn.)).

- ***In re Asacol Antitrust Litigation:*** The firm served as class counsel for direct purchasers of Asacol HS and Delzicol in a case alleging that defendants participated in a scheme to block generic competition for the ulcerative colitis drug Asacol. The case settled for $15 million. (Case No. 15-cv-12730-DJC (D. Mass.)).

- ***In re Celebrex (Celecoxib) Antitrust Litigation***: The firm represented a class of direct purchasers of brand and generic Celebrex (celecoxib) in an action alleging that Pfizer, in violation of the Sherman Act, improperly obtained a patent for Celebrex from the U.S. Patent and Trademark Office in a scheme to unlawfully extend patent protection and delay market entry of generic versions of Celebrex. The case settled for $94 million. (Case No. 14-cv-00361 (E.D. VA.)).

- ***In re DDAVP Direct Purchaser Antitrust Litigation:*** Berger Montague served as co-lead counsel in a case that charged defendants with using sham litigation and a fraudulently obtained patent to delay the entry of generic versions of the prescription drug DDAVP. Berger Montague achieved a $20.25 million settlement only after winning a precedent-setting victory before the United States Court of Appeals for the Second Circuit that ruled that direct purchasers had standing to recover overcharges arising from a patent-holder's misuse of an allegedly fraudulently obtained patent. (Case No. 05-2237 (S.D.N.Y.)).

- ***In re K-Dur Antitrust Litigation:*** Berger Montague served as co-lead counsel for the class in this long-running antitrust litigation. Berger Montague litigated the case before the Court of Appeals and won a precedent-setting victory and continued the fight before the Supreme Court. On remand, the case settled for $60.2 million. (Case No. 01-1652 (D.N.J.)).

- ***In re Loestrin 24 Fe Antitrust Litigation:*** Berger Montague served as co-lead counsel for the class of direct purchasers of brand Loestrin, generic Loestrin, and/or brand Minastrin. The direct purchaser class alleged that defendants violated federal antitrust laws by unlawfully impairing the introduction of generic versions of the prescription drug Loestrin 24 Fe. The case settled shortly before trial for $120 million (Case No. 13-md-2472) (D.R.I.).

- ***Meijer, Inc., et al. v. Abbott Laboratories:*** Berger Montague served as co-lead counsel in a class action on behalf of pharmaceutical wholesalers and pharmacies charging Abbott Laboratories with illegally maintaining monopoly power and overcharging purchasers in violation of the federal antitrust laws. Plaintiffs alleged that Abbott had used its monopoly with respect to its anti-HIV medicine Norvir (ritonavir) to protect its monopoly power for another highly profitable Abbott HIV drug, Kaletra. This antitrust class action settled for $52 million after four days of a jury trial in federal court in Oakland, California. (Case No. 07-5985 (N.D. Cal.)).

- ***Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Ltd. Co.:*** Berger Montague served as co-lead counsel in a case challenging Warner Chilcott's alleged anticompetitive practices with respect to the branded drug Doryx. The case settled for $15 million. (Case No. 2:12-cv-03824 (E.D. Pa.)).

- ***In re Oxycontin Antitrust Litigation:*** Berger Montague served as co-lead counsel on behalf of direct purchasers of the prescription drug Oxycontin. The case settled in 2011 for $16 million. (Case No. 1:04-md-01603 (S.D.N.Y)).

- ***In re Prandin Direct Purchaser Antitrust Litigation:*** Berger Montague served as co-lead counsel and recovered $19 million on behalf of direct purchasers of the diabetes medication Prandin. (Case No. 2:10-cv-12141 (E.D. Mich.)).

- ***Rochester Drug Co-Operative, Inc. v. Braintree Labs., Inc.*:** Berger Montague served as co-lead counsel on behalf of direct purchasers alleging sham litigation led to the delay of generic forms of the brand drug Miralax. The case settled for $17.25 million. (Case No. 07-142 (D. Del.)).

- ***In re Skelaxin Antitrust Litigation:*** Berger Montague was among a small group of firms litigating on behalf of direct purchasers of the drug Skelaxin. The case settled for $73 million. (Case No. 2:12-cv-83 / 1:12-md-02343) (E.D. Tenn.)).

- ***In re Solodyn Antitrust Litigation:*** Berger Montague served as co-lead counsel representing a class of direct purchasers of brand and generic Solodyn (extended-release minocycline hydrochloride tablets) alleging that defendants entered into agreements not to compete in the market for extended-release minocycline hydrochloride tablets in violation of the Sherman Act. With a final settlement on the eve of trial, the case settled for a total of more than $76 million. (Case No. 14-MD-2503-DJC (D. Mass.)).

- ***In re Tricor Antitrust Litigation:*** Berger Montague was one of a small group of counsel in a case alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Tricor. The case settled for $250 million. (No. 05-340 (D. Del.)).

- ***In re Wellbutrin XL Antitrust Litigation:*** Berger Montague served as co-lead counsel for a class of direct purchasers of the antidepressant Wellbutrin XL. A settlement of $37.5 million was reached with Valeant Pharmaceuticals (formerly Biovail), one of two defendants in the case. (Case No. 08-cv-2431 (E.D. Pa.)).

Commercial Litigation

Berger Montague helps business clients achieve extraordinary successes in a wide variety of complex commercial litigation matters. Our attorneys appear regularly on behalf of clients in high stakes federal and state court commercial litigation across the United States. We work with our clients to develop a comprehensive and detailed litigation plan, and then organize, allocate and deploy whatever resources are necessary to successfully prosecute or defend the case.

- ***Robert S. Spencer, et al. v. The Arden Group, Inc., et al.*:** Berger Montague represented an owner of limited partnership interests in several commercial real estate partnerships in a lawsuit against the partnerships' general partner. The terms of the settlement are subject to a confidentiality agreement. (Aug. Term, 2007, No. 02066 (Pa. Ct. Com. Pl., Phila. Cty. - Commerce Program)).

- ***Forbes v. GMH:*** Berger Montague represented a private real estate developer/investor who sold a valuable apartment complex to GMH for cash and publicly-held securities. The case which claimed securities fraud in connection with the transaction settled for a confidential sum which represented a significant portion of the losses experienced. (No. 07-cv-00979 (E.D. Pa.)).

Commodities & Financial Instruments

Berger Montague ranks among the country's preeminent firms for managing and trying complex Commodities & Financial Instruments related cases on behalf of individuals and as class actions. The firm's commodities clients include individual hedge and speculation traders, hedge funds, energy firms, investment funds, and precious metals clients.

- ***In re Peregrine Financial Group Customer Litigation:*** Berger Montague served as co-lead counsel in a class action which helped deliver settlements worth more than $75 million on behalf of former customers of Peregrine Financial Group, Inc., in litigation against U.S. Bank, N.A., and JPMorgan Chase Bank, N.A., arising from Peregrine's collapse in July 2012. The lawsuit alleges that both banks breached legal duties by allowing Peregrine's owner to withdraw and put millions of dollars in customer funds to non-customer use. (No. 1:12-cv-5546)

- ***In re MF Global Holdings Ltd. Investment Litigation*:** Berger Montague is one of two co-lead counsel that represented thousands of commodities account holders who fell victim to the alleged massive theft and misappropriation of client funds at the former major global commodities brokerage firm MF Global. Berger Montague reached a variety of settlements, including with JPMorgan Chase Bank, the MF Global SIPA Trustee, and the CME Group, that collectively helped to return approximately $1.6 billion to the class. Ultimately, class members received more than 100% of the funds allegedly misappropriated by MF Global even after all fees and expenses. (No. 11-cv-07866 (S.D.N.Y.).

- ***In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*:** Berger Montague is one of two co-lead counsel representing traders of traders of gold-based derivative contracts, physical gold, and gold-based securities against The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank AG, HSBC Bank plc, Société Générale and the London Gold Market Fixing Limited. Plaintiffs allege that the defendants, members of the London Gold Market Fixing Limited, which sets an important benchmark price for gold, conspired to manipulate this benchmark for their collective benefit. (1:14-md-02548 (S.D.N.Y.)).

- ***In re Libor-Based Financial Instruments Antitrust Litigation*:** Berger Montague represents exchange-based investors in this sprawling litigation alleging a conspiracy among many of the world's largest banks to manipulate the key LIBOR benchmark rate. LIBOR plays an important role in valuing trillions of dollars of financial instruments worldwide. The case, filed in 2011, alleges that the banks colluded to misreport and manipulate LIBOR rates for their own benefit. The banks' conduct damaged, among others, exchange-based investors who transacted in Eurodollar futures and options on the CME between 2005 and 2010. Eurodollar futures and options are keyed to LIBOR and are the world's most heavily traded short-term interest rate contracts. Following years of hotly contested litigation on behalf of these exchange-based investors, Berger Montague and its co-counsel achieved settlements with seven banks totaling more than $180 million. In September 2019, the Court granted preliminary approval of a plan of distribution for these settlement funds. A final approval hearing on the settlement is scheduled in September 2020. (No. 1:11-md-02262-NRB (S.D.N.Y.)).

Consumer Protection

Berger Montague's Consumer Protection Group protects consumers when they are injured by false or misleading advertising, defective products, data privacy breaches, and various other unfair trade practices. Consumers too often suffer the brunt of corporate wrongdoing, particularly in the area of false or misleading advertising, defective products, and data or privacy breaches.

- ***In re Public Records Fair Credit Reporting Act Litigation***: Berger Montague is class counsel in three class action settlements involving how the big three credit bureaus, Experian, TransUnion, and Equifax, report public records, including tax liens and civil judgments. The settlements provide groundbreaking injunctive relief valued at over $100 billion and provide a streamlined process for consumers to receive uncapped monetary payments for claims related to inaccurate reporting of public records.

- ***In re: CertainTeed Fiber Cement Siding Litigation***: The firm, as one of two Co-Lead Counsel firms obtained a settlement of more than $103 million in this multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class. (MDL No. 2270 (E.D. Pa.)).

- ***Countrywide Predatory Lending Enforcement Action:*** Berger Montague advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a landmark law enforcement proceeding against *Countrywide* (and its parent, Bank of America) culminating in 2008 in mortgage-related modifications and other relief for borrowers across the country valued at some $8.6 billion.

- ***In re Experian Data Breach Litigation***: Berger Montague served on the Executive Committee of this class action lawsuit that arose from a 2015 data breach at Experian in which computer hackers stole personal information including Social Security numbers and other sensitive personal information for approximately 15 million consumers. The settlement is valued at over $170 million. It consisted of $22 million for a non-reversionary cash Settlement Fund; $11.7 million for Experian's remedial measures implemented in connection with the lawsuit; and two years of free credit monitoring and identity theft insurance. The aggregate value of credit monitoring claimed by class members during the claims submission process exceeded $138 million, based on a $19.99 per month retail value of the service.

- ***In re Pet Foods Product Liability Litigation***: The firm served as one of plaintiffs' co-lead counsel in this multidistrict class action suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food. The case settled for $24 million. Many terms of the settlement are unique and highly beneficial to the class, including allowing class members to recover up to 100% of their economic damages without any limitation on the types of economic damages they may recover. (1:07-cv-02867 (D.N.J.), MDL Docket No. 1850 (D.N.J.)).

- ***In re TJX Companies Retail Security Breach Litigation***: The firm served as co-lead counsel in this multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history. The breach involved more than 45 million credit and debit card numbers and 450,000 customers' driver's license numbers. The case was settled for benefits valued at over $200 million. Class members whose driver's license numbers were at risk were entitled to 3 years of credit monitoring and identity theft insurance (a value of $390 per person based

on the retail cost for this service), reimbursement of actual identity theft losses, and reimbursement of driver's license replacement costs. Class members whose credit and debit card numbers were at risk were entitled to cash of $15-$30 or store vouchers of $30-$60. (No. 1:07-cv-10162-WGY, (D. Mass.)).

- ***In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation:*** The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement of cash and injunctive relief for a class of 130 million credit card holders whose credit card information was stolen by computer hackers. The breach was the largest known theft of credit card information in history. (No. 4:09-MD-2046 (S.D. Tex. 2009)).

- ***In re: Countrywide Financial Corp. Customer Data Security Breach Litigation***: The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement for a class of 17 million individuals whose personal information was at risk when a rogue employee sold their information to unauthorized third parties. Settlement benefits included: (i) reimbursement of several categories of out-of-pocket costs; (ii) credit monitoring and identity theft insurance for 2 years for consumers who did not accept Countrywide's prior offer of credit monitoring; and (iii) injunctive relief. The settlement was approved by the court in 2010. (3:08-md-01998-TBR (W.D. Ky. 2008)).

- ***In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation*:** The firm served on the plaintiffs' steering committee and obtained an $11.1 million settlement in 2006 on behalf of persons who were incorrectly scored on a teacher's licensing exam. (MDL No. 1643 (E.D. La.)).

- ***Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.*:** The firm served as co-lead counsel in litigation brought on behalf of a nationwide class alleging that defendants failed to disclose that its vehicles contained defectively designed timing belt tensioners and associated parts and that defendants misrepresented the appropriate service interval for replacement of the timing belt tensioner system. After extensive discovery, a settlement was reached. (Docket No. ATL-1461-03 (N.J. Sup. Ct. 2007)).

Corporate Governance and Shareholder Rights

Berger Montague protects the interests of individual and institutional investors in shareholder derivative actions in state and federal courts across the United States. Our attorneys help individual and institutional investors reform poor corporate governance, as well as represent them in litigation against directors of a company for violating their fiduciary duty or provide guidance on shareholder rights.

- ***Emil Rossdeutscher and Dennis Kelly v. Viacom:*** The firm, as lead counsel, obtained a settlement resulting in a fund of $14.25 million for the class. (C.A. No. 98C-03-091 (JEB) (Del. Super. Ct.)).

- ***Fox v. Riverview Realty Partners, f/k/a Prime Group Realty Trust, et al.:*** The firm, as lead counsel, obtained a settlement resulting in a fund of $8.25 million for the class.

Employee Benefits & ERISA

Berger Montague represents employees who have claims under the federal Employee Retirement Income Security Act. We litigate cases on behalf of employees whose 401(k) and pension investments have suffered losses as a result of the breach of fiduciary duties by plan administrators and the companies they represent. Berger Montague has recovered hundreds of millions of dollars in lost retirement benefits for American workers and retirees, and also gained favorable changes to their retirement plans.

- ***Diebold v. Northern Trust Investments, N.A.*:** As co-lead counsel in this ERISA breach of fiduciary duty case, the firm secured a $36 million settlement on behalf of participants in retirement plans who participated in Northern Trust's securities lending program. Plaintiffs alleged that defendants breached their ERISA fiduciary duties by failing to manage properly two collateral pools that held cash collateral received from the securities lending program. The settlement represented a recovery of more than 25% of alleged class member losses. (No. 1:09-cv-01934 (N.D. Ill.)).

- ***Glass Dimensions, Inc. v. State Street Bank & Trust Co.***: The firm served as co-lead counsel in this ERISA case that alleged that defendants breached their fiduciary duties to the retirement plans it managed by taking unreasonable compensation for managing the securities lending program in which the plans participated. After the court certified a class of the plans that participated in the securities lending program at issue, the case settled for $10 million on behalf of 1,500 retirement plans that invested in defendants' collective investment funds. (No. 1:10-cv-10588-DPW (D. Mass)).

- ***In re Eastman Kodak ERISA Litigation*:** The firm served as class counsel in this ERISA breach of fiduciary duty class action which alleged that defendants breached their fiduciary duties to Kodak retirement plan participants by allowing plan investments in Kodak common stock. The case settled for $9.7 million. (Master File No. 6:12-cv-06051-DGL (W.D.N.Y.)).

- ***Lequita Dennard v. Transamerica Corp. et al*.:** The firm served as counsel to plan participants who alleged that they suffered losses when plan fiduciaries failed to act solely in participants' interests, as ERISA requires, when they selected, removed and monitored plan investment options. The case settled for structural changes to the plan and $3.8 million monetary payment to the class. (Civil Action No. 1:15-cv-00030-EJM (N.D. Iowa)).

Employment & Unpaid Wages

The Berger Montague Employment & Unpaid Wages Department works tirelessly to safeguard the rights of employees and devotes all of their energies to helping the firm's clients achieve their goals. Our attorneys' understanding of federal and state wage and hour laws, federal and state civil rights and discrimination laws, ERISA, the WARN Act, laws protecting whistleblowers, such

as federal and state False Claims Acts, and other employment laws, allows us to develop creative strategies to vindicate our clients' rights and help them secure the compensation to which they are entitled.

Berger Montague is at the forefront of class action litigation, seeking remedies for employees under the Fair Labor Standards Act, state wage and hour law, breach of contract, unjust enrichment, and other state common law causes of action.

Berger Montague's Employment & Unpaid Wages Group, which is chaired by Executive Shareholder Shanon Carson, is repeatedly recognized for outstanding success in effectively representing its clients. In 2015, *The National Law Journal* selected Berger Montague as the top plaintiffs' law firm in the Employment Law category at the Elite Trial Lawyers awards ceremony. Portfolio Media, which publishes *Law360*, also recognized Berger Montague as one of the eight Top Employment Plaintiffs' Firms in 2009.

Representative cases include the following:

- ***Fenley v. Wood Group Mustang, Inc*:** The firm served as lead counsel and obtained a settlement of $6.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 2:15-cv-326 (S.D. Ohio)).

- ***Sanders v. The CJS Solutions Group, LLC*:** The firm served as co-lead counsel and obtained a settlement of $3.24 million on behalf of a class of IT healthcare consultants who allegedly did not receive overtime premiums for hours worked in excess of 40 per week. (Civil Action No. 17-3809 (S.D.N.Y.)).

- ***Gundrum v.* Cleveland Integrity Services, Inc.:** The firm served as lead counsel and obtained a settlement of $4.5 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 4:17-cv-55 (N.D. Okl.)).

- ***Fenley v.* Applied Consultants, Inc.:** The firm served as lead counsel and obtained a settlement of $9.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 2:15-cv-259 (W.D. Pa.)).

- ***Acevedo v. Brightview Landscapes, LLC*:** The firm served as co-lead counsel and obtained a settlement of $6.95 million on behalf of a class of landscaping crew members who allegedly did not receive proper overtime premiums for hours worked in excess of 40 per week. (Civil Action No. 3:13-cv-02529 (M.D. Pa.)).

- ***Jantz v. Social Security Administration:*** The firm served as co-lead counsel and obtained a settlement on behalf of employees with targeted disabilities ("TDEs") alleged

that SSA discriminated against TDEs by denying them promotional and other career advancement opportunities. The settlement was reached after more than ten years of litigation, and the Class withstood challenges to class certification on four separate occasions. The settlement includes a monetary fund of $9.98 million and an unprecedented package of extensive programmatic changes valued at approximately $20 million. (EEOC No. 531-2006-00276X (2015)).

- ***Ciamillo v. Baker Hughes, Incorporated:*** The firm served as lead counsel and obtained a settlement of $5 million on behalf of a class of oil and gas workers who allegedly did not receive any overtime compensation for working hours in excess of 40 per week. (Civil Action No. 14-cv-81 (D. Alaska)).

- ***Salcido v. Cargill Meat Solutions Corp.:*** The firm served as co-lead counsel and obtained a settlement of $7.5 million on behalf of a class of thousands of employees of Cargill Meat Solutions Corp. alleging that they were forced to work off-the-clock and during their breaks. This is one of the largest settlements of this type of case involving a single plant in U.S. history. (Civil Action Nos. 1:07-cv-01347-LJO-GSA and 1:08-cv-00605-LJO-GSA (E.D. Cal.)).

- ***Chabrier v. Wilmington Finance, Inc.:*** The firm served as co-lead counsel and obtained a settlement of $2,925,000 on behalf of loan officers who worked in four offices to resolve claims for unpaid overtime wages. A significant opinion issued in the case is *Chabrier v. Wilmington Finance, Inc.*, 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant's motion to decertify the class). (No. 06-4176 (E.D. Pa.)).

- ***Bonnette v. Rochester Gas & Electric Co.:*** The firm served as co-lead counsel and obtained a settlement of $2 million on behalf of a class of African American employees of Rochester Gas & Electric Co. to resolve charges of racial discrimination in hiring, job assignments, compensation, promotions, discipline, terminations, retaliation, and a hostile work environment. (No. 07-6635 (W.D.N.Y.)).

Environment & Public Health

Berger Montague lawyers are trailblazers in the fields of environmental class action litigation and mass torts. Our attorneys have earned their reputation in the fields of environmental litigation and mass torts by successfully prosecuting some of the largest, most well-known cases of our time. Our Environment & Public Health Group also prosecutes significant claims for personal injury, commercial losses, property damage, and environmental response costs. In 2016, Berger Montague was named an Elite Trial Lawyer Finalist in special litigation (environmental) by *The National Law Journal*.

- ***Cook v. Rockwell International Corporation:*** In February 2006, the firm won a $554 million jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium from the former Rocky Flats nuclear weapons site northwest of Denver, Colorado. Judgment in the case was entered by the court in June 2008 which, with

interest, totaled $926 million. Recognizing this tremendous achievement, the Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award for 2009 on Merrill G. Davidoff, David F. Sorensen, and the entire trial team for their "long and hard-fought" victory against "formidable corporate and government defendants." (No. 90-cv-00181-JLK (D. Colo.)). The jury verdict in that case was vacated on appeal in 2010, but on a second trip to the Tenth Circuit, Plaintiffs secured a victory in 2015, with the case then being sent back to the district court. A $375 million settlement was reached in May 2016, and final approval by the district court was obtained in April 2017.

- ***In re Exxon Valdez Oil Spill Litigation*:** On September 16, 1994, a jury trial of several months duration resulted in a record punitive damages award of $5 billion against the Exxon defendants as a consequence of one of the largest oil spills in U.S. history. The award was reduced to $507.5 million pursuant to a Supreme Court decision. David Berger was co-chair of the plaintiffs' discovery committee (appointed by both the federal and state courts). Harold Berger served as a member of the organizing case management committee. H. Laddie Montague was specifically appointed by the federal court as one of the four designated trial counsel. Both Mr. Montague and Peter Kahana shared (with the entire trial team) the 1995 "Trial Lawyer of the Year Award" given by the Trial Lawyers for Public Justice. (No. A89-0095-CVCHRH (D. Alaska)).

- ***Drayton v. Pilgrim's Pride Corp.:*** The firm served as counsel in a consolidation of wrongful death and other catastrophic injury cases brought against two manufacturers of turkey products, arising out of a 2002 outbreak of Listeria Monocytogenes in the Northeastern United States, which resulted in the recall of over 32 million pounds of turkey – the second largest meat recall in U.S. history at that time. A significant opinion issued in the case is *Drayton v. Pilgrim's Pride Corp.*, 472 F. Supp. 2d 638 (E.D. Pa. 2006) (denying the defendants' motions for summary judgment and applying the alternative liability doctrine). All of the cases settled on confidential terms in 2006. (No. 03-2334 (E.D. Pa.)).

- ***In re Three Mile Island Litigation:*** As lead/liaison counsel, the firm successfully litigated the case and reached a settlement in 1981 of $25 million in favor of individuals, corporations and other entities suffering property damage as a result of the nuclear incident involved. (C.A. No. 79-0432 (M.D. Pa.)).

Insurance Fraud

When insurance companies and affiliated financial services entities engage in fraudulent, deceptive or unfair practices, Berger Montague helps injured parties recover their losses. We focus on fraudulent, deceptive and unfair business practices across all lines of insurance and financial products and services sold by insurers and their affiliates, which include annuities, securities and other investment vehicles.

- ***Spencer v. Hartford Financial Services Group, Inc.:*** The firm, together with co-counsel, prosecuted this national class action against The Hartford Financial Services Group, Inc. and its affiliates in the United States District Court for the District of Connecticut (*Spencer*

v. Hartford Financial Services Group, Inc., Case No. 05-cv-1681) on behalf of approximately 22,000 claimants, each of whom entered into structured settlements with Hartford property and casualty insurers to settle personal injury and workers' compensation claims. To fund these structured settlements, the Hartford property and casualty insurers purchased annuities from their affiliate, Hartford Life. By purchasing the annuity from Hartford Life, The Hartford companies allegedly were able to retain up to 15% of the structured amount of the settlement in the form of undisclosed costs, commissions and profit - all of which was concealed from the settling claimants. On March 10, 2009, the U.S. District Court certified for trial claims on behalf of two national subclasses for civil RICO and fraud (256 F.R.D. 284 (D. Conn. 2009)). On October 14, 2009, the Second Circuit Court of Appeals denied The Hartford's petition for interlocutory appeal under Federal Rule of Civil Procedure 23(f). On September 21, 2010, the U.S. District Court entered judgment granting final approval of a $72.5 million cash settlement.

- ***Nationwide Mutual Insurance Company v. O'Dell:*** The firm, together with co-counsel, prosecuted this class action against Nationwide Mutual Insurance Company in West Virginia Circuit Court, Roane County (*Nationwide Mutual Insurance Company v. O'Dell*, Case No. 00-C-37), on behalf of current and former West Virginia automobile insurance policyholders, which arose out of Nationwide's failure, dating back to 1993, to offer policyholders the ability to purchase statutorily-required optional levels of underinsured ("UIM") and uninsured ("UM") motorist coverage in accordance with West Virginia Code 33-6-31. The court certified a trial class seeking monetary damages, alleging that the failure to offer these optional levels of coverage, and the failure to provide increased first party benefits to personal injury claimants, breached Nationwide's insurance policies and its duty of good faith and fair dealing, and violated the West Virginia Unfair Trade Practices Act. On June 25, 2009, the court issued final approval of a settlement that provided a minimum estimated value of $75 million to Nationwide auto policyholders and their passengers who were injured in an accident or who suffered property damage.

Predatory Lending and Borrowers' Rights

Berger Montague's attorneys fight vigorously to protect the rights of borrowers when they are injured by the practices of banks and other financial institutions that lend money or service borrowers' loans. Berger Montague has successfully obtained multi-million-dollar class action settlements for nationwide classes of borrowers against banks and financial institutions and works tirelessly to protect the rights of borrowers suffering from these and other deceptive and unfair lending practices.

- ***Coonan v. Citibank, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Citibank and its affiliates in the United States District Court for the Northern District of New York concerning alleged kickbacks Citibank received in connection with its force-placed insurance programs. The firm obtained a settlement of $122 million on behalf of a class of hundreds of thousands of borrowers.

- ***Arnett v. Bank of America, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Bank of America and its affiliates in the United States District Court for the District of Oregon concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of $31 million on behalf of a class of hundreds of thousands of borrowers.

- ***Clements v. JPMorgan Chase Bank, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against JPMorgan Chase and its affiliates in the United States District Court for the Northern District of California concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of $22,125,000 on behalf of a class of thousands of borrowers.

- ***Holmes v. Bank of America, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Bank of America and its affiliates in the United States District Court for the Western District of North Carolina concerning alleged kickbacks received in connection with its force-placed wind insurance program. The firm obtained a settlement of $5.05 million on behalf of a class of thousands of borrowers.

Securities & Investor Protection

In the area of securities litigation, the firm has represented public institutional investors – such as the retirement funds for the States of Pennsylvania, Connecticut, New Hampshire, New Jersey, Louisiana and Ohio, as well as the City of Philadelphia and numerous individual investors and private institutional investors. The firm was co-lead counsel in the *Melridge Securities Litigation* in the Federal District Court in Oregon, in which jury verdicts of $88.2 million and a RICO judgment of $239 million were obtained. Berger Montague has served as lead or co-lead counsel in numerous other major securities class action cases where substantial settlements were achieved on behalf of investors.

- ***In re Merrill Lynch Securities Litigation:*** Berger Montague, as co-lead counsel, obtained a recovery of $475 million for the benefit of the class in one of the largest recoveries among the recent financial crisis cases. (No. 07-cv-09633 (S.D.N.Y.)).

- ***In re: Oppenheimer Rochester Funds Group Securities Litigation:*** The firm, as co-lead counsel, obtained a $89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc. (No. 09-md-02063-JLK (D. Col.)).

- ***In re KLA Tencor Securities Litigation:*** The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of $65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.)).

- ***In re NetBank, Inc. Securities Litigation:*** The firm served as lead counsel in this certified class action on behalf of the former common shareholders of NetBank, Inc. The $12.5

million settlement, which occurred after class certification proceedings and substantial discovery, is particularly noteworthy because it is one of the few successful securities fraud class actions litigated against a subprime lender and bank in the wake of the financial crisis. (No. 07-cv-2298-TCB (N.D. Ga.)).

- ***The City Of Hialeah Employees' Retirement System v. Toll Brothers, Inc.:*** The firm, as co-lead counsel, obtained a class settlement of $25 million against Home Builder Toll Brothers, Inc. (No. 07-cv-1513 (E.D. Pa.)).

- ***In re Alcatel Alsthom Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement for investors of $75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.)).

- ***Qwest Securities Action:*** The firm represented New Jersey in an opt-out case against Qwest and certain officers, which was settled for $45 million. (C.A. No. L-3838-02 (Superior Court New Jersey, Law Division)).

Whistleblower, *Qui Tam*, and False Claims Act

Berger Montague has represented whistleblowers in matters involving healthcare fraud, defense contracting fraud, IRS fraud, securities fraud, and commodities fraud, helping to return more than $3 billion to federal and state governments. In return, whistleblower clients retaining Berger Montague to represent them in state and federal courts have received more than $500 million in rewards. Berger Montague's time-tested approach in whistleblower/*qui tam* representation involves cultivating close, productive attorney-client relationships with the maximum degree of confidentiality for our clients.

Judicial Praise for Berger Montague Attorneys

Berger Montague's record of successful prosecution of class actions and other complex litigation has been recognized and commended by judges and arbitrators across the country. Some remarks on the skill, efficiency, and expertise of the firm's attorneys are excerpted below.

Antitrust Cases

From **Judge Lorna G. Schofield**, of the U.S. District Court for the Southern District of New York:

> "I'm not sure I've ever seen a case without a single objection or opt-out, so congratulations on that."

Transcript of the November 19, 2020 Hearing in ***Contant, et al. v. Bank of America Corp., et al.***, No. 1:17-cv-03139 (S.D.N.Y.).

From **Judge William E. Smith,** of the U.S. District Court for the District of Rhode Island:

> "The degree to which you all litigated the case is – you know, I can't imagine attorneys litigating a case more rigorously than you all did in this case. It seems like every conceivable, legitimate, substantive dispute that could have been fought over was fought over to the max. So you, both sides, I think litigated the case as vigorously as any group of attorneys could. The level of representation of all parties in terms of the sophistication of counsel was, in my view, of the highest levels. I can't imagine a case in which there was really a higher quality of representation across the board than this one."

Transcript of the August 27, 2020 Hearing in ***In re Loestrin 24 Fe Antitrust Litigation***, No. 13-md-02472 (D.R.I.).

From **Judge Margo K. Brodie,** of the U.S. District Court for the Eastern District of New York:

> "Class counsel has without question done a tremendous job in litigating this case. They represent some of the best plaintiff-side antitrust groups in the country, and the size and skill of the defense they litigated against cannot be overstated. They have also demonstrated the utmost professionalism despite the demands of the extreme perseverance that this case has required…"

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, No. 1:05-md-01720 (E.D.N.Y. 2019) (Mem. & Order).

From **Judge Brian M. Cogan**, of the U.S. District Court of the Eastern District of New York:

> "This is a substantial recovery that has the deterrent effect that class actions are supposed to have, and I think it was done because we had really good Plaintiffs' lawyers in this case who were running it."

Transcript of the June 24, 2019 Fairness Hearing in ***In re Dental Supplies Antitrust Litigation***, No. 16-cv-696 (E.D.N.Y.).

From **Judge Michael M. Baylson**, of the U.S. District Court of the Eastern District of Pennsylvania:

> "[C]ounsel…for direct action plaintiffs have done an outstanding job here with representing the class, and I thought your briefing was always very on point. I thought the presentation of the very contentious issues on the class action motion was very well done, it was very well briefed, it was well argued."

Transcript of the June 28, 2018 Hearing in ***In re Domestic Drywall Antitrust Litigation***, No. MD-13-2437 at 11:6-11.

From **Judge Madeline Cox Arleo,** of the U.S. District Court for the District of New Jersey praising the efforts of all counsel:

> "I just want to thank you for an outstanding presentation. I don't say that lightly . . . it's not lost on me at all when lawyers come very, very prepared. And really, your clients should be very proud to have such fine lawyering. I don't see lawyering like this every day in the federal courts, and I am very grateful. And I appreciate the time and the effort you put in, not only to the merits, but the respect you've shown for each other, the respect you've shown for the Court, the staff, and the time constraints. And as I tell my law clerks all the time, good lawyers don't fight, good lawyers advocate. And I really appreciate that more than I can express."

Transcript of the September 9 to 11, 2015 Daubert Hearing in ***Castro v. Sanofi Pasteur***, No. 11-cv-07178 (D.N.J.) at 658:14-659:4.

From **Judge William H. Pauley, III**, of the U.S. District Court of the Southern District of New York:

> "Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression."
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> * * *
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> "Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues …. The law firms of Berger Montague and Coughlin Stoia were indefatigable. They represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

In re Currency Conversion Fee Antitrust Litigation, 263 F.R.D. 110, 129 (2009).

From **Judge Faith S. Hochberg,** of the United States District court for the District of New Jersey:

> "[W]e sitting here don't always get to see such fine lawyering, and it's really wonderful for me both to have tough issues and smart lawyers … I want to congratulate all of you for the really hard work you put into this, the way you presented the issues, … On behalf of the entire federal judiciary I want to thank you for the kind of lawyering we wish everybody would do."

In re Remeron Antitrust Litig., Civ. No. 02-2007 (Nov. 2, 2005).

From U.S. District **Judge Jan DuBois**, of the U.S. District Court of the Eastern District of Pennsylvania:

> "[T]he size of the settlements in absolute terms and expressed as a percentage of total damages evidence a high level of skill by petitioners … The Court has repeatedly stated that the lawyering in the case at every stage was superb, and does so again."

In re Linerboard Antitrust Litig., 2004 WL 1221350, at *5-*6 (E.D. Pa. 2004).

From **Judge Nancy G. Edmunds**, of the U.S. District Court of the Eastern District of Michigan:

> "[T]his represents an excellent settlement for the Class and reflects the outstanding effort on the part of highly experienced, skilled, and hard working Class Counsel….[T]heir efforts were not only successful, but were highly organized and efficient in addressing numerous complex issues raised in this litigation[.]"

In re Cardizem CD Antitrust Litig., MDL No. 1278 (E.D. Mich., Nov. 26, 2002).

From **Judge Charles P. Kocoras,** of the U.S. District Court for the Northern District of Illinois:

> "The stakes were high here, with the result that most matters of consequence were contested. There were numerous trips to the courthouse, and the path to the trial court and the Court of Appeals frequently traveled. The efforts of counsel for the class has [sic] produced a substantial recovery, and it is represented that the cash settlement alone is the second largest in the history of class action litigation. . . .There is no question that the results achieved by class counsel were extraordinary [.]"

Regarding the work of Berger Montague in achieving more than $700 million in settlements with some of the defendants in ***In Re Brand Name Prescription Drugs Antitrust Litigation***, 2000 U.S. Dist. LEXIS 1734, at *3-*6 (N.D. Ill. Feb. 9, 2000).

From **Judge Peter J. Messitte,** of the U.S. District Court for the District of Maryland:

"The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt, the plaintiffs' counsel are at the top of the profession in this regard and certainly have used their expertise to craft an extremely favorable settlement for their clients, and to that extent they deserve to be rewarded."

Settlement Approval Hearing, Oct. 28, 1994, in ***Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.***, CA No. PJM-92-3624 (D. Md.).

From **Judge Donald W. Van Artsdalen,** of the U.S. District Court for the Eastern District of Pennsylvania:

> "As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs' counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure."

Bogosian v. Gulf Oil Corp., 621 F. Supp. 27, 31 (E.D. Pa. 1985).

From **Judge Krupansky**, who had been elevated to the Sixth Circuit Court of Appeals:

> "Finally, the court unhesitatingly concludes that the quality of the representation rendered by counsel was uniformly high. The attorneys involved in this litigation are extremely experienced and skilled in their prosecution of antitrust litigation and other complex actions. Their services have been rendered in an efficient and expeditious manner, but have nevertheless been productive of highly favorable result."

In re Art Materials Antitrust Litigation, 1984 CCH Trade Cases ¶65,815 (N.D. Ohio 1983).

From **Judge Joseph Blumenfeld,** of the U.S. District Court for the District of Connecticut:

> "The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions."

In re Master Key Antitrust Litigation, 1977 U.S. Dist. LEXIS 12948, at *35 (Nov. 4, 1977).

Securities & Investor Protection Cases

From **Judge Brantley Starr** of the U.S. District Court for the Northern District of Texas, Dallas Division:

> "I think y'all have been a model on how to handle a case like this. So I appreciate the diligence y'all have put in separating the fee negotiations until after the main event is resolved…Everything I see here is in great shape, and really a testament to y'all's diligence and professionalism. So hats off to y'all…So thanks again for your professionalism in handling this case and handling the stipulated settlement. Y'all are model citizens, and so I wish I could send everyone to y'all's school of litigation management."

Howell Family Trust DTD 1/27/2004 v. Hollis Greenlaw, et al., No. 3:18-cv-02864-X (N.D. Tex., March 25, 2021).

From **Judge Jed Rakoff** of the U.S. District Court for the Southern District of New York:

> Court stated that lead counsel had made "very full and well-crafted" and "excellent submissions"; that there was a "very fine job done by plaintiffs' counsel in this case"; and that this was "surely a very good result under all the facts and circumstances."

In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, Master File No. 07-cv-9633(JSR)(DFE) (S.D.N.Y., July 27, 2009).

From **Judge Michael M. Baylson** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive."

In re CIGNA Corp. Sec. Litig., 2007 U.S. Dist. LEXIS 51089, at *17-*18 (E.D. Pa. July 13, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The quality of lawyering on both sides, but I am going to stress now on the plaintiffs' side, simply has not been exceeded in any case, and we have had some marvelous counsel appear before us and make superb arguments, but they really don't come any better than Mrs. Savett… [A]nd the arguments we had on the motion to dismiss [Mrs. Savett argued the motion], both sides were fabulous, but plaintiffs' counsel were as good as they come."

In re U.S. Bioscience Secs. Litig., No. 92-0678 (E.D. Pa. April 4, 1994).

From **Judge Wayne Andersen** of the U.S. District Court for the Northern District of Illinois:

> "[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases…in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here…I would say this has been the best representation that I have seen."

In re: Waste Management, Inc. Secs. Litig., No. 97-C 7709 (N.D. Ill. 1999).

From **Chancellor William Chandler, III** of the Delaware Chancery Court:

> "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case. And I think that's a testimony – Mr. Valihura correctly says that's what they are supposed to do. I recognize that; that is their job, and they were doing it professionally."

Ginsburg v. Philadelphia Stock Exchange, Inc., No. 2202 (Del. Ch., Oct. 22, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "Thanks to the nimble class counsel, this sum, which once included securities worth $149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received $145,754,922.00. The class also received $14,435,104 in interest on the Notes."
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> "Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over $1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here."

In re Rite Aid Corp. Securities Litigation, 269 F. Supp. 2d 603, 605, n.1, 611 (E.D. Pa. 2003).

From **Judge Helen J. Frye**, United States District Judge for the U.S. District Court for the District of Oregon:

> "In order to bring about this result [partial settlements then totaling $54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District."
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> * * *
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> "Throughout the course of their representation, the attorneys at Berger Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence."

In Re Melridge, Inc. Securities Litigation, No. CV 87-1426-FR (D. Ore. April 15, 1996).

From **Judge Marvin Katz** of the U.S. District Court for the Eastern District of Pennsylvania:

> "[T]he co-lead attorneys have extensive experience in large class actions, experience that has enabled this case to proceed efficiently and professionally even under short deadlines and the pressure of handling thousands of documents in a large multi-district action... These counsel have also acted vigorously in their clients' interests...."
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> * * *
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> "The management of the case was also of extremely high quality.... [C]lass counsel is of high caliber and has extensive experience in similar class action litigation.... The submissions were of consistently high quality, and class counsel has been notably diligent in preparing filings in a timely manner even when under tight deadlines."

Commenting on class counsel, where the firm served as both co-lead and liaison counsel in ***In re Ikon Office Solutions, Inc. Securities Litigation***, 194 F.R.D. 166, 177, 195 (E.D. Pa. 2000).

From **Judge William K. Thomas,** Senior District Judge for the United States District Court for the Northern District of Ohio:

> "In the proceedings it has presided over, this court has become directly familiar with the specialized, highly competent, and effective quality of the legal services performed by Merrill G. Davidoff, Esq. and Martin I. Twersky, Esq. of Berger Montague...."
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> * * *

> "Examination of the experience-studded biographies of the attorneys primarily involved in this litigation and review of their pioneering prosecution of many class actions in antitrust, securities, toxic tort matters and some defense representation in antitrust and other litigation, this court has no difficulty in approving and adopting the hourly rates fixed by Judge Aldrich."

Commenting in ***In re Revco Securities Litigation***, Case No. 1:89CV0593, Order (N.D. Oh. September 14, 1993).

Consumer Protection Cases

From **Judge Paul A. Engelmayer** of the U.S. District Court for the Southern District of New York:

> "I know the diligence of counsel and dedication of counsel to the class…Thank you, Ms. Drake. As always I appreciate the – your extraordinary dedication to your – to the class and the very obvious backwards and forwards familiarity you have with the case and level of preparation and articulateness today. It's a pleasure always to have you before me…Class Counsel [] generated this case on their own initiative and at their own risk. Counsel's enterprise and ingenuity merits significant compensation…Counsel here are justifiably proud of the important result that they achieved."

Sept. 22, 2020, Final Approval Hearing, ***Gambles v. Sterling Info., Inc.***, No. 15-cv-9746.

From **Judge Joel Schneider** of the U.S. District Court for the District of New Jersey:

> "I do want to compliment all counsel for how they litigated this case in a thoroughly professional manner. All parties were zealously represented in the highest ideals of the profession, legitimately and professionally, and not the usual acrimony we see in these cases…I commend the parties and their counsel for a very workmanlike professional effort."

Transcript of the September 10, 2020 Final Fairness Hearing in ***Somogyi, et al. v. Freedom Mortgage Corp.***

From **Judge Harold E. Kahn** of the Superior Court of California County of San Francisco:

> "You are extraordinarily impressive. And I thank you for being here, and for your candid, non-evasive response to every question I have. I was extremely skeptical at the outset of this morning. You have allayed all of my concerns and have persuaded me that this is an important issue, and that you have done a great service to the class. And for that reason, I am going to approve your settlement in all respects, including the motion for attorneys' fees. And I congratulate you on your excellent work."

Transcript of the November 7, 2017 Hearing in ***Loretta Nesbitt v. Postmates, Inc.***, No. CGC-15-547146

Civil/Human Rights Cases

From **Deputy Treasury Secretary Stuart E. Eizenstat**:

> "We must be frank. It was the American lawyers, through the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them.... For this dedication and commitment to the victims, we should always be grateful to these lawyers."

In his remarks at the July 17, 2000, signing ceremony for the international agreements which established the German Foundation to act as a funding vehicle for the payment of claims to Holocaust survivors.

Insurance Litigation

From **Judge Janet C. Hall**, of the U.S. District Court of the District of Connecticut:

> Noting the "very significant risk in pursuing this action" given its uniqueness in that "there was no prior investigation to rely on in establishing the facts or a legal basis for the case….[and] no other prior or even now similar case involving parties like these plaintiffs and a party like these defendants." Further, "the quality of the representation provided to the plaintiffs ... in this case has been consistently excellent…. [T]he defendant[s] ... mounted throughout the course of the five years the case pended, an extremely vigorous defense…. [B]ut for counsel's outstanding work in this case and substantial effort over five years, no member of the class would have recovered a penny…. [I]t was an extremely complex and substantial class ... case ... [with an] outstanding result."

Regarding the work of Berger Montague attorneys Peter R. Kahana and Steven L. Bloch, among other co-class counsel, in ***Spencer, et al. v. The Hartford Financial Services Group, Inc., et al.,*** in the Order approving the $72.5 million final settlement of this action, dated September 21, 2010 (No. 3:05-cv-1681, D. Conn.).

Customer/Broker Arbitrations

From **Robert E. Conner**, Public Arbitrator with the National Association of Securities Dealers, Inc.:

> "[H]aving participated over the last 17 years in 400 arbitrations and trials in various settings, ... the professionalism and the detail and generally the civility of everyone involved has been not just a cause for commentary at the end of these proceedings but between ourselves [the arbitration panel] during the course of them, and ... the detail and the intellectual rigor that went into the documents was fully reflective of the effort that was made in general. I wanted to make that known to everyone and to express my particular respect and admiration."

About the efforts of Berger Montague shareholders Merrill G. Davidoff and Eric L. Cramer, who achieved a $1.1 million award for their client, in ***Steinman v. LMP Hedge Fund, et al.***, NASD Case No. 98-04152, at Closing Argument, June 13, 2000.

Employment & Unpaid Wages Cases

From **Judge Timothy R. Rice**, United States Magistrate Judge for the U.S. District Court for the Eastern District of Pennsylvania:

> Describing Berger Montague as "some of the finest legal representation in the nation," who are "ethical, talented, and motivated to help hard working men and women."

Regarding the work of Berger Montague attorney Camille F. Rodriguez in ***Gonzalez v. Veritas Consultant Group, LLC, d/b/a Moravia Health Network***, No. 2:17-cv-1319-TR (E.D. Pa. March 13, 2019).

From **Judge Malachy E. Mannion**, United States District Judge for the U.S. District Court for the Middle District of Pennsylvania:

> "At the final approval hearing, class counsel reiterated in detail the arguments set forth in the named plaintiffs' briefing. … The court lauded the parties for their extensive work in reaching a settlement the court deemed fair and reasonable.
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> * * *
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> "The court is confident that [class counsel] are highly skilled in FLSA collective and hybrid actions, as seen by their dealings with the court and the results achieved in both negotiating and handling the settlement to date."

Acevedo v. Brightview Landscapes, LLC, No. 3:13-cv-2529, 2017 WL 4354809 (M.D. Pa. Oct. 2, 2017).

From **Judge Joseph F. Bataillon**, United States District Judge for the U.S. District Court for the District of Nebraska:

> [P]laintiffs' counsel succeeded in vindicating important rights. … The court is familiar with "donning and doffing" cases and based on the court's experience, defendant meat packing companies' litigation conduct generally reflects "what can only be described as a deeply-entrenched resistance to changing their compensation practices to comply with the requirements of FLSA." (citation omitted). Plaintiffs' counsel perform a recognized public service in prosecuting these actions as a 'private Attorney General' to protect the rights of underrepresented workers.
>
> The plaintiffs have demonstrated that counsel's services have benefitted the class. … The fundamental policies of the FLSA were vindicated and the rights of the workers were protected.

Regarding the work of Berger Montague among other co-counsel in ***Morales v. Farmland Foods**, Inc.*, No. 8:08-cv-504, 2013 WL 1704722 (D. Neb. Apr. 18, 2013).

From **Judge Jonathan W. Feldman**, United States Magistrate Judge for the U.S. District Court for the Western District of New York:

> "The nature of the instant application obliges the Court to make this point clear: In my fifteen years on the bench, no case has been litigated with more skill, tenacity and legal professionalism than this case. The clients, corporate and individual, should be proud of the manner in which their legal interests were brought before and presented to the Court by their lawyers and law firms."
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> and
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> "…the Court would be remiss if it did not commend class counsel and all those who worked for firms representing the thousands of current and former employees of Kodak for the outstanding job they did in representing the interests of their clients. For the last several years, lead counsel responsibilities were shared by Shanon Carson …. Their legal work in an extraordinarily complex case was exemplary, their tireless commitment to seeking justice for their clients was unparalleled and their conduct as officers of the court was beyond reproach."

Employees Committed For Justice v. Eastman Kodak, (W.D.N.Y. 2010) ($21.4 million settlement).

Attorneys Litigating the *Pipich, et. al., v. O'Reilly Auto Enterprises, LLC, et. al.*, Matter

Shanon J. Carson – Executive Shareholder
Shanon J. Carson is an Executive Shareholder of the firm. He Co-Chairs the Employment & Unpaid Wages, Consumer Protection, Defective Products, and Defective Drugs and Medical Devices Departments and is a member of the Firm's Commercial Litigation, Employee Benefits & ERISA, Environment & Public Health, Insurance Fraud, Predatory Lending and Borrowers' Rights, and Technology, Privacy & Data Breach Departments.

Mr. Carson has achieved the highest peer-review rating, "AV," in Martindale-Hubbell, and has received honors and awards from numerous publications. In 2009, Mr. Carson was selected as one of 30 "Lawyers on the Fast Track" in Pennsylvania under the age of 40. In both 2015 and 2016, Mr. Carson was selected as one of the top 100 lawyers in Pennsylvania, as reported by Thomson Reuters. In 2018, Mr. Carson was named to the *Philadelphia Business Journal*'s "2018 Best of the Bar: Philadelphia's Top Lawyers."

Mr. Carson is often retained to represent plaintiffs in employment cases, wage and hour cases for minimum wage violations and unpaid overtime, ERISA cases, consumer cases, insurance cases, construction cases, automobile defect cases, defective drug and medical device cases, product liability cases, breach of contract cases, invasion of privacy cases, false advertising cases, excessive fee cases, and cases involving the violation of state and federal statutes. Mr. Carson represents plaintiffs in all types of litigation including class actions, collective actions, multiple plaintiff litigations, and single plaintiff litigation. Mr. Carson is regularly appointed by federal courts to serve as lead counsel and on executive committees in class actions and mass torts.

Mr. Carson is frequently asked to speak at continuing legal education seminars and other engagements and is active in nonprofit and professional organizations. Mr. Carson currently serves on the Board of Directors of the Philadelphia Trial Lawyers Association (PTLA) and as a Co-Chair of the PTLA Class Action/Mass Tort Committee. Mr. Carson is also a member of the American Association for Justice, the American Bar Foundation, Litigation Counsel of America, the National Trial Lawyers - Top 100, and the Pennsylvania Association for Justice.

While attending the Dickinson School of Law of the Pennsylvania State University, Mr. Carson was senior editor of the Dickinson Law Review and clerked for a U.S. District Court Judge. Mr. Carson currently serves on the Board of Trustees of the Dickinson School of Law of the Pennsylvania State University.

Alexandra K. Piazza – Shareholder
Alexandra K. Piazza is a Shareholder in the firm's Employment Law & Unpaid Wages practice group. Ms. Piazza has dedicated her career to representing workers throughout the country in complex class and collective actions arising under federal and state laws. She has extensive experience in all aspects of litigation, mediation, arbitration, and settlement, and she has been appointed class counsel in dozens of actions nationwide.

Ms. Piazza is a graduate of the University of Pennsylvania and Villanova University School of Law. During law school, Ms. Piazza served as a managing editor of the Villanova Sports and Entertainment Law Journal and as president of the Labor and Employment Law Society. Ms. Piazza also interned at the United States Attorney's Office and served as a summer law clerk for the Honorable Eduardo C. Robreno of the United States District Court for the Eastern District of Pennsylvania. She is licensed to practice law in the State of New Jersey and State of California, the District of Columbia, and the Commonwealth of Pennsylvania.

In 2021 and 2023, Ms. Piazza was named in the *Best Lawyers* list of "Ones to Watch." In 2022 and 2023, Ms. Piazza was named by Thomson Reuters as a "Rising Star."

Camille Fundora Rodriguez – Shareholder
Ms. Rodriguez is a Shareholder in the firm's Employment Law & Unpaid Wages practice group. Ms. Rodriguez primarily focuses on wage and hour class and collective actions arising under the Fair Labor Standards Act and state laws. She is also the Diversity, Equity, and Inclusion Coordinator and leads the Firm's DEI Task Force, which enacts a broad range of diversity efforts, including efforts to hire and retain attorneys and non-attorneys from diverse backgrounds and to foster an inclusive work environment, including through Firmwide trainings on implicit bias issues that may impact the workplace.

Prior to joining the firm, Ms. Rodriguez practiced in the litigation department at a boutique Philadelphia law firm where she represented clients in a variety of personal injury, disability, and employment discrimination matters. Ms. Rodriguez is a graduate of Widener University School of Law.

Ms. Rodriguez was recently named a 2023 The Best Lawyers in America: Ones to Watch. She was also a Pennsylvania Super Lawyer "Rising Star" in 2022. In 2021, Ms. Rodriguez was named a "Rising Star" by *Law360*, a "Rising Star of the Plaintiffs Bar" by the *National Law Journal*, and "Lawyer on the Fast Track" by *The Legal Intelligencer*. She also has been a Pennsylvania Super Lawyer "Rising Star" between 2017 and 2021.

Ms. Rodriguez is an active member of the Pennsylvania, Philadelphia, and Hispanic Bar Associations.

Michael J. Anderson – Associate
Michael Anderson is an Associate in the firm's Employment Law & Unpaid Wages practice group. Mr. Anderson is a member in good standing of the bars of the Commonwealth of Pennsylvania and the State of New Jersey.

Mr. Anderson graduated *cum laude* from William & Mary Law School and was recognized for his work in public service. Mr. Anderson represented his third-year class on the Student Bar Association, participated in the Leadership Institute, and served as a member of the *William & Mary Journal of Race, Gender, and Social Justice*.

During law school, Mr. Anderson completed two federal judicial externships with the Hon. Raymond A. Jackson and the Hon. John A. Gibney in the Eastern District of Virginia. In his final year, Mr. Anderson spent much of his time advocating for students with disabilities through William & Mary's Special Education Advocacy Clinic. In the clinic, Mr. Anderson counseled families, represented clients at special education meetings, and negotiated with school districts to provide appropriate special education services under the Individuals with Disabilities Education Act (IDEA). Mr. Anderson also worked as a law clerk at Victor M. Glasberg & Associates, where he assisted the firm with litigating complex civil rights cases involving law enforcement misconduct, police brutality, and employment discrimination under federal laws.