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7 Attorneys for Plaintiff,

8 ERIC AYALA, and all others similarly situated

(additional attorneys listed on next page)

9 **IN THE UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 ERIC AYALA and ADRIAN AVILES,
13 on behalf of themselves and all others
14 similarly situated, and as “aggrieved
15 employees” on behalf of other
16 “aggrieved employees” under the Labor
Code Private Attorneys General Act of
2004,

17 *Plaintiff(s),*

18 vs.

19
20 UPS SUPPLY CHAIN SOLUTIONS,
21 INC., a Delaware corporation; UPS
22 SUPPLY CHAIN SOLUTIONS
GENERAL SERVICES, INC., a
23 Delaware corporation; and DOES 1 10,
24 inclusive,

25 *Defendant(s).*

Case No.: 5:20-cv-00117-PSG-AFM

**DECLARATION OF DAVID
SPIVAK IN SUPPORT OF
MOTION FOR AWARD OF
ATTORNEYS’ FEES AND COSTS,
SETTLEMENT
ADMINISTRATION COSTS, AND
CLASS REPRESENTATIVE
SERVICE AWARDS**

Date: January 14, 2022

Time: 1:30 p.m.

Courtroom: 6A

Judge: Hon. Philip S. Gutierrez



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ATTORNEYS FOR PLAINTIFF ADRIAN AVILES

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DECLARATION OF DAVID SPIVAK

I, DAVID SPIVAK, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and United States District Court, Central District of California and am an attorney of record for Plaintiff Eric Ayala in his complaint against UPS Supply Chain Solutions, Inc. and UPS Supply Chain Solutions General Services, Inc. (“Defendants”). Plaintiffs Eric Ayala and Adrian Aviles (“Plaintiffs”) and Defendants are collectively referred to herein as “Parties.” 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.

2. A true and correct copy of the “Joint Stipulation of Class Action Settlement” (“the Settlement”) is attached hereto as **Exhibit A**.

3. Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement and supporting evidence on July 2, 2021 (ECF Docket No. 100). This Court signed an order granting preliminary approval of the Settlement on August 24, 2021 (ECF Docket No. 102). A true and correct copy of the Court’s order preliminary approving the Settlement is attached to this declaration as **Exhibit B**.

Adequacy

4. 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.

5. 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 became admitted to the District of Columbia Bar. On February 21, 2013, I became admitted to the New York bar.

6. I am experienced in handling employment law matters and specifically wage and hour cases. I have been practicing law since 1995. My experience has been



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1 almost exclusively in the area of employment law representing employees with
2 claims of wrongful termination, harassment, whistleblower retaliation,
3 discrimination, wage and hour, and family and medical leave violations. I have tried
4 many cases before California and federal courts, government agencies and neutral
5 arbitrators. I am a member of the California Employment Lawyers Association
6 (CELA).

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

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

18 B. *Jorge Guzman v. Department of Justice*, United States District
19 Court, Central District of California (the Honorable Lourdes Baird presiding), 1999.
20 Plaintiffs Special Agent for the Immigration and Naturalization Service alleged
21 racial discrimination, retaliation and police brutality by agents of the Office of the
22 Inspector General. Jury found the Defendants liable. Case settled shortly before the
23 damages phase. *See* “U.S. to Pay \$400,000 to INS Agent in Bias Suit; Courts:
24 Complaint says he suffered 10 years of harassment on the job because he is Latino,
25 including falsified charges” by Patrick J. McDonnell, *Los Angeles Times*, January
26 21, 1999.

27 C. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court,
28 Compton (the Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower



1 brought civil rights claims and wrongful termination claims against employer in a
2 month-long jury trial. The jury awarded compensatory and punitive damages. *See*
3 “Activist Says Criticism of Rail Plan Cost His Job” by Dan Weikel, *Los Angeles*
4 *Times*, September 28, 2000; “Punitive Damages Awarded to Fired Social Worker”
5 by Dan Weikel, *Los Angeles Times*, June 10, 2000; “A Whistleblower’s Revenge”
6 by Susan Goldsmith, *New Times Los Angeles*, June 8, 2000.

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

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

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

24 G. *Alina Ghrdilyan v. RJ Financial, Inc.*, et al., LA Superior Court
25 case no. BC430633 (2012), the Honorable Ronald Sohigian presiding. To my
26 knowledge, this case is the first and only case to be successfully prosecuted through
27 trial under the Labor Code Private Attorney Generals Act of 2004, Labor Code §§
28 2698, *et seq.* on behalf of Plaintiffs and other aggrieved employees against someone



1 other than an employer for civil penalties including unpaid wages. The case involves
2 claims of unpaid overtime, unprovided rest and meal periods, unpaid vacation,
3 untimely interval and final wages, and unreimbursed expenses. For my work in that
4 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and
5 experience.

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

9 9. In my representation of employees, I have prosecuted several lawsuits
10 on behalf of employees with claims of rest and meal period and overtime violations
11 or other wage claims. I have been involved in the prosecution of numerous wage
12 and hour class actions at various stages of litigation. A small sampling of the wage
13 and hour class action cases in which I have been counsel of record is as follows:

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

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

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

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

27 E. *DiCato v. Francesca's Collections, Inc.*, San Diego County
28 Superior Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class



1 Counsel and granted final approval of class action settlement on behalf of boutique
2 manager and assistant manager employees).

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

6 G. *Fischer v. National Distribution Centers*, Riverside County
7 Superior Court, Case No. RIC1114952 (appointed Class Counsel and granted final
8 approval of class action settlement on behalf of hourly warehouse employees).

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

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

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

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

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

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



1 N. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case
2 No. BC442608 (appointed Class Counsel and granted final approval of class action
3 settlement on behalf of call concert rigging employees).

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

7 P. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon,*
8 *Inc.*, United States District Court, Central District of California, Case No. EDCV13-
9 00672-KJM-KJN (appointed Class Counsel and granted final approval of class
10 action settlement on behalf of virtual customer account executives).

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

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

18 S. *Celeste Shaw and Dejan Nagl v. Interthinx, Inc.*, United States
19 District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB
20 (appointed Class Counsel and granted final approval of class action settlement by
21 the court on behalf of auditor employees).

22 T. *Stucker v. L’Oreal*, Los Angeles Sup.Ct. Case No. BC456080
23 (appointed Class Counsel and granted final approval of class action settlement
24 involving alleged misclassification of sales employees and unpaid vacation pay).

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

28 V. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior



1 Court, Case No. BC421485 (granted class certification through contested motion
2 and appointed Class Counsel in case on behalf of former security workers based on
3 late final wage payments in violation of Labor Code §§ 201–203).

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

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

12 Y. *Wade and Gammel, et al. v. Defender Security Company*, Central
13 District of California, Case No. 2:15-cv-7142 CAS-JC (appointed Class Counsel
14 and granted final approval class action settlement on behalf of security technicians).

15 Z. *White v. 20/20 Communications, Inc.*, San Bernardino County
16 Superior Court, Case No. CIVRS1301718 (appointed Class Counsel and granted
17 final approval of class action settlement on behalf of sales associates).

18 10. The Los Angeles Superior Court approved an hourly rate of \$650.00
19 for me, as reasonable attorneys’ fees in *Tucker v. Maly’s West, Inc.*, Los Angeles
20 County Superior Court, Case No. BC483920 over six years ago. A true and correct
21 copy of this order is attached to this declaration as **Exhibit C**.

22 11. Class Counsel are being paid entirely on contingency and have not been
23 paid any attorneys’ fees since assuming representation of Plaintiffs. The work
24 performed by Class Counsel for the Plaintiffs was extensive. Among other things,
25 Class Counsel:

- 26 • Conducted initial investigation and developed the theories and facts to
27 support Plaintiffs’ claims as to Defendants’ alleged violations;
- 28 • Submitted detailed notices to the California Labor and Workforce



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Development Agency (“LWDA”);

- Researched and drafted the initial complaint;
- Sought and obtained formal and informal discovery, including, but not limited to, the production of Defendants’ relevant written company policies;
- Reviewed and analyzed voluminous policies and other documents produced by Defendants;
- Interviewed class members;
- Prepared a detailed brief with liability exposure calculations for two days of mediation, each with a different mediator, that led to the Settlement;
- Engaged in difficult and protracted settlement negotiations with Defendants, including two days of mediation, each with a different mediator;
- Conducted several depositions of defense witnesses over several days and defended the depositions of Plaintiffs;
- Drafted and revised settlement agreements, motions and proposed orders for preliminary approval, and related documents; and
- Incurred over \$133,166.02 in costs to date and expect to incur an additional \$131.80 in costs for a total of \$133,347.82.

Moreover, in litigating this case against Defendants, Plaintiffs and Class Counsel faced serious risks—not least of which was an order by this Court denying class certification for comparable claims against Defendants brought previously by another plaintiff¹—including, but not limited to, the risks of obtaining, and maintaining, class certification, and defeating summary judgment, risk of a prolonged and expensive trial, and the risk of lengthy appeals.

12. The proposed award of \$600,000.00 in attorneys’ fees, one-third of the common fund, is fair, adequate, and reasonable under the percentage of the fund

¹ *La Tasha Coates v. UPS*, CV 18-3012 PSG (AFMx), July 2, 2019 (“*Coates*”). A true and correct copy of the Central District Court’s order in *Coates* is attached hereto as **Exhibit R**.



1 approach. This amount is less than the amount that my co-counsel and I would
2 receive if we individually represented each class member under our regular
3 contingency fee agreements that authorize fees of up to 40% of the ultimate
4 recovery. As the authorities cited in the accompanying Memorandum of Points and
5 Authorities show, fee requests of one-third of the fund are commonly approved. This
6 is also consistent with my experience in wage and hour class actions to have been
7 awarded attorneys' fees equaling one-third of the funds in the following wage and
8 hour class actions: *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon,*
9 *Inc.*, United States District Court, Central District of California, Case No. EDCV13-
10 00672-KJM-KJN (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al.*,
11 San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of
12 \$1,540,000 fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct.,
13 Case No. BC462917 (one-third of \$1,700,000 fund); *Cunningham v. DPI Specialty*
14 *Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of
15 \$1,150,000 fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles
16 Sup.Ct., Case No. BC431249 (one-third of \$975,000 fund); *O'Brien v. Optima*
17 *Network Services, Inc.*, San Bernardino County Superior Court, Case No.
18 CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles
19 County Superior Court, Case No. BC439558 (one-third of fund); *Perez v. Southwest*
20 *Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253
21 (one-third of fund); *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior
22 Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San
23 Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of
24 fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No.
25 CIVRS1001579 (one-third of fund); *Cuellar v. v. Lovin Oven*, Orange County
26 Superior Court, Case No. 30-2010-000382146; *Nardone v. Sequoia Beverage*
27 *Company, LP*, Tulare County Superior Court, Case No. VCU-248370; *Wade and*
28 *Gammel, et al. v. Defender Security Company*, U.S. District Court, Central District



1 of California, Case No. 15-CV-7142-CAS-JC; *Fischer v. National Distribution*
2 *Centers*, Riverside County Superior Court, Case No. RIC1114952; *Alafa v. Custom*
3 *Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-
4 245496; *Hernandez, et al v. HSBC*, U.S. District Court, Central District of
5 California, Case No. 10-CV-4753; *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles
6 Sup. Ct., Case No. BC456080; *King v. Build.com*, Butte Sup.Ct., Case No. 159985;
7 *DiCato v. Francesca's Collections, Inc.*, San Diego County Superior Court, Case
8 No. 37-2012-00094401-CU-OE-CTL; *Clarke v. Insight Global*, U.S. District Court,
9 Southern District of California, Case No. 13-CV-0357; *Tucker v. Maly's West, Inc.*,
10 Los Angeles Sup.Ct., Case No. BC483920; *Nichols, et al. v. Vitamin Shoppe*, Contra
11 Costa Sup.Ct., Case No. CIVMSC13-01136.

12 13. Attached hereto as **Exhibit D** is a true and correct copy of the
13 Declaration of G. Arthur Meneses in Support of Motion for a Class Representative
14 Enhancement Payment and an Award of Attorneys' Fees and Costs from *Acheson*
15 *v. Express, LLC*, Santa Clara County Superior Court, Case No. 109CV135335. Mr.
16 Meneses reports court awarded attorney's fees equaling approximately one third of
17 the common fund in the following class action settlements involving his law firm:
18 *Chin v. Countrywide Home Loans, Inc.* (San Joaquin Super. Ct. No.: 39-2010-
19 00252741-CU-OE-STK) (30% award); *Ethridge v. Universal Health Servs.*, (L.A.
20 Super. Ct. No. BC391958) (33% award); *Magee v. Am. Residential Servs. LLC*,
21 (L.A. Super. Ct. No. BC423798) (33% award); *Blue v. Coldwell Banker Residential*
22 *Brokerage Co., et al.* (L.A. Super. Ct. No. BC417335) (33% award); *Aguiar v.*
23 *Cingular Wireless LLC et al.* (C.D. Cal. No. 05-02907) (30% award); *Silva v.*
24 *Catholic Mortuary Servs., Inc.*, No. BC408054 (L.A. Super. Ct.) (33% award); *Chin*
25 *v. Wachovia Financial Services Inc. et al.*, No. 08-00684 (N.D. Cal.) (33% award);
26 *Burrows v. Combined Ins. Co. of Am.*, No. 08-01752 (E.D. Cal.) (33% award);
27 *Mares v. BFS Retail & Comm. Operations LLC et al.*, No. BC375967 (L.A. Super.
28 Ct.) (33% award); *Bejarano v. Amerisave Mortgage Corp.*, No. CV 08-00599 (E.D.



1 Cal.) (33% award); *Blair et al. v. Jo-Ann Stores, Inc.*, BC394795 (L.A. Super. Ct.)
2 (33% award); *Weisbarth and List v. H R Block Financial Advisors, Inc.*, No. 07-
3 00236 (C.D. Cal.) (33% award); *Perez and Comeaux v. Standard Concrete*, No. 30-
4 2008-00211820 (Orange County Super. Ct.) (33% award); *Ward v. Doyon Sec.*
5 *Servs., LLC*, BS 9000517 (San Bernardino Super. Ct.) (33% award); *Winzelberg v.*
6 *Liberty Mutual Ins. Co.*, No. CV 07-460 (C.D. Cal) (33% award); *Perry v.*
7 *SunAmerica*, No. CV 07-1193 (C. D. Cal.) (33% award); *Barrett v. The St. John*
8 *Companies*, No. BC354278 (L.A. Super. Ct.) (33% award); *Simpson v. e*Trade*,
9 No. CV 06-156 (C. D. Cal.) (33% award); *Clymer and Benton v. Candle Acquisition*
10 *Co.*, No. BC328765 (L.A. Super. Ct.) (33% award); *Dunlap v. Bank of America,*
11 *N.A.*, No. BC328934 (L.A. Super Ct.) (33% award); *Taylor v. Ross Stores, Inc.*, No.
12 RCV 065453, JCCP 4331 (San Bernardino Super. Ct.) (33% award); *Case et al. v.*
13 *Toyohara America Inc.*, No. BC328111 (L.A. Super. Ct.) (33% award); *Sunio v.*
14 *Marsh USA, Inc.*, No. BC328782 (L.A. Super Ct.) (33% award); and *Kenemixay v.*
15 *Nordstroms, Inc.*, No. BC318850 (L.A. Super. Ct.) (50% award). Mr. Meneses also
16 reports as follows:

17 ...California courts regularly approve attorneys' fees equaling one-
18 third of the common fund or higher: *Chavez v. Netflix, Inc.*, 162 Cal.
19 App. 4th 43, 66, n.11 (2008) (numerous studies have shown that "fee
20 awards in class actions average around one-third of the recovery");
21 *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-
22 00077680 (San Diego Super. Ct.) (40% award); *Chalmers v. Elecs.*
23 *Boutique*, No. BC306571 (L.A. Super. Ct.) (33% award); *Boncore v.*
24 *Four Points Hotel ITT Sheraton*, No. GIC807456 (San Diego Super.
25 Ct.) (33% award); *Vivens, et al. v. Wackenhut Corp.*, No. BC290071
26 (L.A. Super. Ct.) (31% award); *Crandall v. U-Haul Intl., Inc.*, No.
27 BC178775 (L.A. Super. Ct.) (40% award); *Albrecht v. Rite Aid Corp.*,
28 No. 729219 (San Diego Super. Ct.) (35% award); *Marroquin v. Bed*
Bath & Beyond, No. RG04145918 (Alameda Super. Ct.) (33% award);
In re Milk Antitrust Litig., No. BC070061 (L.A. Super. Ct.) (33%
award); *Sandoval v. Nissho of California, Inc.*, No. 37-2009-00097861
(San Diego Super. Ct.) (33% award); *In re Liquid Carbon Dioxide*



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1 Cases, No. J.C.C.P. 3012 (San Diego Super. Ct.) (33% award); *In re*
2 *California Indirect-Purchaser Plasticware Antitrust Litigation*, Nos.
3 961814, 963201, and 963590 (San Francisco Super. Ct.) (33% award);
4 *Bright v. Kanzaki Specialty Papers*, No. CGC-94-963598 (San
5 Francisco Super. Ct.) (33% award); *Parker v. City of L.A.*, 44 Cal. App.
6 3d 556, 567-68 (1974) (33% award); *Kritz v. Fluid Components, Inc.*,
7 No. GIN057142 (San Diego Super. Ct.) (35% award); *Benitez, et al. v.*
8 *Wilbur*, No. 08-01122 (E.D. Cal.) (33% award); and *Chavez, et al. v.*
9 *Petrissans, et al.*, No. 08-00122 (E.D. Cal.) (33% award); *Vasquez v.*
10 *Aartman*, No. 02-05624 (E.D. Cal.) (30% award); and *Leal v.*
11 *Wyndham Worldwide Corp.*, No. 37-2009-00084708 (San Diego
12 Super. Ct.) (38% award).

13 14. My co-counsel and I have expended time, effort, and money that we
14 could have expended on less risky cases instead. My co-counsel and I took on this
15 representation well aware of the risks involved and with the full intention of seeing
16 it to the end, including through any appeals (and could still, in theory, have to litigate
17 appellate issues pending the outcome of this motion and the expiration of the appeals
18 period). In the face of the risks involved and the contrary authorities discussed
19 above, we performed tremendous amount of work and vigorously litigated this
20 action.

21 15. My previous experience in litigating wage and hour class actions also
22 supports the reasonableness of the fee request, as does the caliber of opposing
23 counsel. My previous experience in similar matters was integral in evaluating the
24 strengths and weaknesses of the case against Defendants and the reasonableness of
25 the Settlement. Practice in the narrow field of wage and hour litigation requires skill
26 and knowledge concerning the rapidly evolving substantive law, state and federal,
27 as well as the procedural law of class action litigation. Because it is reasonable to
28 compensate me and my cocounsel commensurate with our skill, reputation, and
29 experience, attorneys' fees of approximately one-third of the GSA is reasonable.
30 Likewise, the caliber and experience of opposing counsel in labor and employment
31 litigation, GBG LLP, supports the fairness and reasonableness of the requested



1 attorneys' fees.

2 16. Attached hereto as **Exhibit E** is a true and correct copy of the biography
3 page for Elizabeth (Lisa) Brown from the GBG LLP website. She defended this
4 case.

5 17. Attached hereto as **Exhibit F** is a true and correct copy of the biography
6 page for Jennifer Svanfeldt from the GBG LLP website. She defended this case.

7 18. Attached hereto as **Exhibit G** is a true and correct copy of the
8 biography page for Matthew Morris from the GBG LLP website. He defended this
9 case.

10 19. Class Counsel's request for attorneys' fees will also be amply justified
11 under the lodestar method. Currently, my firm spent over 789 hours litigating this
12 case. I expect to perform additional work on this case overseeing the Settlement
13 Administrator's disbursement of the settlement funds to Participating Settlement
14 Class Members.

15 20. In this case, my firm currently has a total lodestar of approximately
16 \$328,825.00 and my co-counsel has a lodestar of approximately \$285,866.25.00 for
17 a total lodestar of approximately \$638,099.25 without the use of any multiplier,
18 which results in a multiplier *below one* (0.940) when compared against the
19 \$600,000 request for attorneys' fees.² Based on the experience and credentials of
20 Class Counsel, which has been set forth above and in our previously filed
21 declarations, these rates are well within the range charged by attorneys with
22 comparable experience and qualifications and thus are reasonable. A general
23 summary showing the number of hours of work performed by each attorney and
24 paralegal of my firm and by each firm representing Plaintiffs is set forth below with
25 a total lodestar of approximately \$638,099.25:

26
27 _____
28 ² A true and correct copy of the fully executed Co-Counsel Agreement between all
Plaintiffs and Class Counsel is attached to this declaration as **Exhibit K**.



Firm	Total Hours	Pre-Multiplier Lodestar
The Spivak Law Firm	789.54	\$328,825.00
Blumenthal Nordrehaug Bhowmik De Blouw LLP	569.95	\$309,274.25
Grand Total	1,359.49	\$638,099.25

Fees Requested	\$600,000
Multiplier	0.940

True and correct copies of the time records of my firm are collectively attached as **Exhibit H** to this declaration with minor redactions to protect the confidentiality of sensitive, privileged information. I will make unredacted copies of such records available to the Court for *in camera* inspection upon its request. As mentioned above, I expect my firm will perform additional work on this case overseeing the administration process and I also expect my firm to perform additional work if the Court grants final approval of the Settlement, including supervision of the Settlement Administrator’s disbursement of the settlement funds to Participating Settlement Class Members.

21. My firm’s current litigation costs total approximately \$70,347.73 to date. True and correct copies of the costs and expense records of my firm are collectively attached as **Exhibit I** to this declaration with minor redactions to protect the confidentiality of sensitive, privileged information. I will make unredacted copies of such records available to the Court for *in camera* inspection upon its request. I anticipate my firm will incur an additional \$131.80 in costs and expenses for delivering courtesy copies of this Motion, the motion for final approval, supplemental briefing in support of this Motion and the motion for final approval, and any final accounting declaration from the Settlement Administrator to the Court. Including the litigation costs of my co-counsel (\$62,868.29), Class Counsel request a total amount of \$133,347.82 for costs and expenses through final accounting of



1 the Settlement.³ See also Decl. Nordrehaud ¶ 11, Exhibit 2.

2 22. Attached as **Exhibit J** is a true and correct copy of a legend that defines
3 the acronyms in the time and expense records identified in the paragraphs above
4 regarding Exhibits H-I.

5 23. The proposed Class Representative Service Award of \$20,000 to each
6 Plaintiff is intended to recognize their substantial initiative and significant efforts on
7 behalf of the Settlement Class. The value of each award, if approved, is only 1.11%
8 of the total amount of the Settlement to each Plaintiff ($\$20,000 / \$1,800,000 =$
9 1.11%) and is justified by the following:

10 a. **General Release.** Unlike the absent Settlement Class Members,
11 Plaintiffs have provided Defendants with a general release. Settlement, ¶ 3.C. This
12 includes a waiver of California Civil Code section 1542. *Id.* This is a significant
13 sacrifice. Further, by agreeing to settle the case in the best interest of the Settlement
14 Class, Plaintiffs have given up the right to pursue individual claims for unpaid
15 wages, unpaid meal and rest period premium wages, and penalties and recover
16 substantially more in unpaid wages, unpaid meal and rest period premium wages,
17 interest, waiting time penalties, pay stub penalties, and civil penalties that they will
18 release as part of this Settlement. See generally Declarations of Eric Ayala and
19 Adrian Aviles. Plaintiffs made this sacrifice so that the Settlement Class may
20 benefit.

21 b. **Fiduciary Responsibilities.** As class representatives, Plaintiffs
22 assumed a fiduciary role to Settlement Class Members, including to: (1) consider
23 the interests of the Settlement Class just as they would consider their own interests
24 and, in some cases, to put the interests of the Settlement Class before their own; (2)

25
26 ³ My co-counsel and I do not seek reimbursement for the wages we paid to the
27 attorneys, paralegals, and legal assistants to aid in the representation of the
28 Settlement Class. My co-counsel and I bore these expenses over the time since this
lawsuit began without expectation of reimbursement.



1 actively participate in the lawsuit, as necessary, by among other things, answering
2 interrogatories, producing documents to Defendants and giving deposition and trial
3 testimony; (3) travel to give their in-person deposition testimony (they were
4 deposed); (4) recognize and accept that any resolution of the lawsuit by dismissal or
5 settlement is subject to court approval and must be designed in the best interest of
6 the Settlement Class as a whole; and (5) follow the progress of the lawsuit and
7 provide all relevant facts to Class Counsel. Plaintiffs agreed to shoulder all of these
8 responsibilities in exchange for a proportionate share of funds made available for
9 distribution to the Settlement Class, with no guarantee of Class Representative
10 Service Awards.

11 c. ***Plaintiffs' Efforts.*** Plaintiffs spent many hours on work related
12 to this lawsuit and Class Counsel depended heavily on Plaintiffs' assistance. *See*
13 *generally* Declarations of Eric Ayala and Adrian Aviles. Plaintiffs challenged their
14 employers on an allegedly unlawful practice that led to this Settlement. Plaintiffs
15 provided Class Counsel with detailed descriptions of how Defendants' business
16 operates and the hours and scheduling of the employees. Plaintiffs assisted Class
17 Counsel extensively by spending considerable amounts of time working with them
18 to develop and investigate the claims, meeting with their counsel in person and by
19 phone, gathering witness identities and contact information, and connecting them
20 with Class Counsel for interviews. Plaintiffs also gave in-person deposition
21 testimony and participated in the mediation.

22 d. ***Plaintiffs Assumed Risks of An Adverse Judgment.*** The law in
23 class actions as it pertains to the obligations of the losing complainant was uncertain
24 at the time Plaintiffs brought their lawsuit. Plaintiffs could have been ordered to pay
25 the attorneys' fees and costs of Defendants if they did not prevail. *See generally*
26 Declarations of Eric Ayala and Adrian Aviles. On many occasions, courts have
27 ordered wage and hour plaintiffs and would-be class representatives to pay
28 outrageous fee and/or cost awards for unsuccessful claims. A few examples are:



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

20 It is unfair in view of the substantial risk of an adverse fee or cost award of several
21 thousand dollars that Plaintiffs receive less as a reward for taking such a risk.
22 Moreover, we cannot lose sight of the fact that Plaintiffs are not high wage earners.
23 Even the lowest of the cost awards listed above would have devastating
24 consequences for Plaintiffs in view of their modest earnings.

25 e. *Plaintiffs’ Individual Shares Of The Recovery Will Be Less*
26 *Than Those Of Some Absent Settlement Class Members*. Under the Settlement,
27 Settlement Class Members will receive a share of the Settlement proceeds based
28 upon the number of workweeks worked during the Class Period. The average



1 Individual Settlement Award to Settlement Class Members will be approximately
2 \$442.08 and the highest Individual Settlement Award to a Settlement Class Member
3 will be approximately \$1,692.33 (Lee Decl., ¶ 13) though some Settlement Class
4 Members—those who worked during more of the Class Period—will receive more,
5 and some less. Because Plaintiffs’ employment ended before the close of the Class
6 Period, there are Settlement Class Members who will have worked more workweeks
7 during the Class Period than Plaintiffs and, as a result, receive larger shares in the
8 recovery – even though they did not actively participate in the lawsuit. Here, the
9 highest Individual Settlement Award to a Settlement Class Member is four times
10 more than the amount Plaintiff Ayala expect to receive for his Individual Settlement
11 Award as a Settlement Class Member ($\$1,692.33 / \$382.79 = 4.42$) and six times
12 more than the amount Plaintiff Aviles expect to receive for his Individual Settlement
13 Award as a Settlement Class Member ($\$1,692.33 / \$252.85 = 6.69$). *See* Lee Decl.,
14 ¶ 13. While this is a risk that Plaintiffs assumed when they brought the lawsuit, it
15 seems unfair to limit Plaintiffs’ recovery to amounts less than an absent Settlement
16 Class Member. *See generally* Declarations of Eric Ayala and Adrian Aviles. To
17 encourage employees like Plaintiffs to don the helm of class champions (and thereby
18 advance the important public policies behind class actions), the Court should award
19 something substantial to Plaintiffs for their readiness to receive less than absent
20 Settlement Class Members, while simultaneously championing their rights.

21 f. ***The Public Policy Behind Class Actions Justifies the Class***
22 ***Representative Service Awards.*** The public policy behind class actions that seek an
23 aggregate recovery of otherwise small amounts of money is equally important and
24 has been recognized by the courts. “The policy at the very core of the class action
25 mechanism is to overcome the problem that small recoveries do not provide the
26 incentive for any individual to bring a solo action prosecuting his or her rights. A
27 class action solves this problem by aggregating the relatively paltry potential
28 recoveries into something worth someone’s (usually an attorney’s) labor.” *Amchem*



1 *Products, Inc. v. Windsor* (1997) 521 U.S. 591 quoting *Mace v. Van Ru Credit Corp.*
2 (1997) 109 F.3d 338, 344. If would-be class action plaintiffs are not adequately
3 incentivized to assume the risk of a substantial cost award, it is unlikely that they
4 will bring such lawsuits in the first place. The average putative class member in this
5 case would be unlikely to pursue his/her individual claims against Defendants
6 because such a claim would be too small to justify the cost and the risk. A putative
7 class member will be unlikely to find an attorney who is willing to pursue an
8 individual's claims because the claims are too small to justify the hundreds of hours
9 of legal work necessary to prove each claim. Only the class action vehicle, which
10 allows for the aggregation of hundreds of risky small dollar value claims, makes
11 such claims advantageous for an attorney to pursue on a contingency basis and there
12 can be no class action without a class member assuming the great fiduciary
13 responsibilities of as class representative. This Court should allow the Class
14 Representative Service Awards requested because to do otherwise would discourage
15 employees (and attorneys) from bringing class actions in the first place. If would-be
16 class action plaintiffs are not adequately incentivized to advance the public policy
17 behind class actions in court in light of the time and risk it will entail, it is unlikely
18 that they will bring class action lawsuits in the first place. Once employers realize
19 that such lawsuits are unlikely, they will have no incentive to comply with wage and
20 hour laws.

21 g. ***Plaintiffs Risked Future Employment Opportunities.*** Plaintiffs
22 faced the risk that they could face worsened career prospects for suing a former
23 employer for wage and hour violations and serving as the Plaintiffs in a class action
24 lawsuit. *See generally* Declarations of Eric Ayala and Adrian Aviles. Because they
25 filed lawsuits in court, public records now exist that Plaintiffs sued their employers
26 for Labor Code violations – a fact that will not be lost on prospective employers
27 considering them for a job. Common sense dictates that an employer will think twice
28 about hiring someone who sued their last employer. Legal experts have recognized



1 this fact. Attached to this declaration as **Exhibit P** is a true and correct copy of the
2 article “What to Expect If You Sue Your Employer.” Attached to this declaration as
3 **Exhibit Q** is a true and correct copy of the article “Employees: Better Think Twice
4 Before Suing Your Employer (Four Reasons Why).” Thus, the risk to Plaintiffs’
5 future employment shows that the Class Representative Service Awards sought are
6 fair, adequate, and reasonable, and warrants final approval of the Court.

7 h. *The Low Individual Burden On Each Settlement Class*
8 *Member Justifies The Class Representative Service Awards.* The burden on each
9 Settlement Class Member to pay the Class Representative Service Award to each
10 Plaintiff is modest. There are approximately 2,100 Settlement Class Members.
11 Dividing the \$20,000 Class Representative Service Award to each Plaintiff evenly
12 among the Settlement Class Members yields a per Settlement Class Member
13 payment of only \$9.52, approximately two percent of the average estimated
14 Individual Settlement Award to Settlement Class Members ($\$20,000 / 2,100 =$
15 $\$9.52$; $\$9.52 / \$442.08 = 2.15\%$). For an average Settlement Class Member, this is
16 an extremely small price to pay to have someone else prosecute the absent
17 Settlement Class Member’s claims and bear the absent Settlement Class Member’s
18 risk of an adverse cost award while the absent Settlement Class Member simply
19 waits to receive his share of the winnings.

20 i. *Plaintiffs have Achieved a Phenomenal Result for the*
21 *Settlement Class Members.* In view of the risks, Plaintiffs achieved a phenomenal
22 result for the Settlement Class Members. There were significant risks (outlined in
23 the preliminary approval motion) to any award on behalf of the Settlement Class
24 Members and still Plaintiffs achieved a settlement of up to \$1,800,000. This
25 outstanding result calls for significant awards to Plaintiffs for making the result
26 possible. Additionally, at \$15.00 per hour (the average hourly wage earned by
27 Settlement Class Members), the average estimated Individual Settlement Award to
28 Settlement Class Members is the equivalent of over 30 hours of unpaid wages and



1 unpaid meal and rest period premium wages under Labor Code §§ 226.7, 510, 512,
2 1194, 1197, and 1198 (the primary remedies sought) ($\$442.08 / \$15.00 = 29.47$
3 hours).

4 24. No subsequent events have cast any doubt on the Court’s determination
5 that the Administration Costs are justifiable and reasonable. Plaintiffs request
6 settlement administration costs in the amount of \$19,000.00 to the Settlement
7 Administrator for its services, as set forth in Phoenix Settlement Administrators’
8 declaration. The Settlement Administrator’s services and charges are reasonable.

9 I declare under the penalty of perjury of the laws of the United States of
10 America that the foregoing is true and correct to the best of my knowledge.

11 Executed on Monday, November 08, 2021 at Encino, California.

12 /s/ David Spivak _____
13 DAVID SPIVAK,
14 Declarant



EXHIBIT A

1 ELIZABETH A. BROWN (SB# 235429)
2 JENNIFER SVANFELDT (SB# 233248)
3 MATTHEW W. MORRIS (SB# 309741)
4 lisabrown@gbglp.com
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11 Facsimile: (213) 995-6382

12 Attorneys for Defendant
13 UPS SUPPLY CHAIN SOLUTIONS, INC.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 ERIC AYALA and ADRIAN AVILES,
17 on behalf of themselves and all others
18 similarly situated.

19 Plaintiff,

20 vs.

21 UPS SUPPLY CHAIN SOLUTIONS,
22 INC., a Delaware corporation; UPS
23 SUPPLY CHAIN SOLUTIONS
24 GENERAL SERVICES, INC., a
25 Delaware corporation; and DOES 1-50,
26 inclusive

27 Defendants.

Case No. 5:20-cv-00117 PSG (AFMx)

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

Courtroom: 6A

Judge: Hon. Philip S. Gutierrez

1 This Stipulation of Class Action Settlement (“Settlement” or “Settlement
2 Agreement”) is reached by and between Plaintiffs Eric Ayala (“Ayala”) and Adrian
3 Aviles (“Aviles”) (collectively “Plaintiffs”), individually and on behalf of all
4 members of the Settlement Class (defined below), on one hand, and Defendant UPS
5 Supply Chain Solutions, Inc. (hereinafter “Defendant”), on the other hand, and is
6 memorialized in this Settlement Agreement. Plaintiffs and Defendant are referred
7 to herein collectively as the “Parties.” Ayala and the Settlement Class are
8 represented by David G. Spivak of The Spivak Law Firm (“Ayala Class Counsel”).
9 Aviles and the Settlement Class are represented by Norman B. Blumenthal, Kyle R.
10 Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De
11 Blouw LLP (“Aviles Class Counsel” and together with Ayala Class Counsel, “Class
12 Counsel”). Defendant is represented by Elizabeth (Lisa) A. Brown and Jennifer
13 Svanfeldt, of GBG LLP.

14 **FACTUAL BACKGROUND**

15 On December 12, 2019, Ayala filed a Complaint against Defendant in the
16 San Bernardino County Superior Court, in the matter entitled *Eric Ayala, on behalf*
17 *of himself and all others similarly situated v. UPS Supply Chain Solutions, Inc., et*
18 *al.*, Case No. CIVDS1937490 (the “Ayala Lawsuit”). On January 15, 2020,
19 Defendants removed the Ayala Lawsuit to the United States District Court for the
20 Central District of California (the “Court”), Case No. 5:20-cv-00117-JFW(KKx).
21 On March 23, 2020, the parties stipulated to a Revised First Amended Class Action
22 Complaint and on April 13, 2020, Ayala filed a First Amended Class Action
23 Complaint, adding a seventh cause of action for civil penalties pursuant to the
24 California Private Attorneys General Act (“PAGA”).

25 On February 18, 2020, Aviles filed a Complaint against Defendant in the
26 Riverside County Superior Court, in the matter entitled *Adrian Aviles on behalf of*
27 *himself and others similarly situated v. UPS Supply Chain Solutions, Inc., et al.*,
28 Case No. RIC2000727 (the “Aviles Lawsuit”). On April 4, 2020, Defendant

1 removed the Aviles Lawsuit to the United States District Court for the Central
2 District of California, Case No. 5:20-cv-00669-JGB-KK.

3 On April 30, 2020, the Parties stipulated for leave to file a consolidated class
4 action complaint adding Adrian Aviles as a plaintiff. The Court granted the
5 stipulation, and on May 1, 2020 Plaintiffs Eric Ayala and Adrian Aviles filed a
6 Consolidated Class Action Complaint now pending in the United States District
7 Court for the Central District of California, Case No. 5:20-cv-00117 (PSG)(AFM).
8 The Consolidated Class Action Complaint alleges seven causes of action for:
9 (1) failure to provide meal and rest periods in violation of California Labor Code
10 §§ 226.7, 512, and 1198; (2) failure to indemnify in violation of California Labor
11 Code §§ 1198 and 2802; (3) failure to pay all wages for all hours worked at the
12 correct rates of pay in violation of California Labor Code §§ 510, 1194, 1197, and
13 1198; (4) failure to provide proper wage statements in violation of California Labor
14 Code §226; (5) waiting time penalties in violation of California Labor Code
15 §§ 201-203; (6) unfair business practices in violation of California’s Unfair
16 Competition Act, Bus. & Prof. Code §17200 et seq., and (7) civil penalties pursuant
17 to PAGA (collectively “The Lawsuit”).

18 **SETTLEMENT AGREEMENT**

19 1. Given the uncertainty of litigation, Plaintiffs and Defendant wish to
20 settle the Lawsuit individually and on behalf of the Settlement Class (defined
21 below). Accordingly, Plaintiffs and Defendant agree as follows:

22 **A. Settlement Class.** For the purposes of this Settlement
23 Agreement only, Plaintiffs and Defendant stipulate to the
24 certification of the following Settlement Class:

- 25 (1) All individuals who are or previously were employed by
26 Defendant in California as non-exempt employees during
27 the Class Period.

28 Any member of the Settlement Class is referred to as the “Settlement Class

1 Member.”

2 B. “Class Period” is defined as the time period of December 12,
3 2015 through the earlier of (a) date of preliminary approval of
4 this Settlement or (b) August 1, 2021.

5 C. “PAGA Settlement Period” is defined as the time period of
6 December 12, 2018 through the earlier of (a) date of preliminary
7 approval of this Settlement or (b) August 1, 2021. Members of
8 the Settlement Class who were employed during the PAGA
9 Settlement Period are defined as “PAGA Settlement Class
10 Members.”

11 The Parties agree that certification for purposes of this Settlement Agreement is not
12 an admission that class certification is proper under Section 382 of the California
13 Code of Civil Procedure or under Rule 23 of the Federal Rules of Civil Procedure.
14 If for any reason this Settlement Agreement is not approved or is terminated, in
15 whole or in part, this conditional agreement to class certification will be
16 inadmissible and will have no effect in this matter or in any claims brought on the
17 same or similar allegations, and the Parties shall revert to the respective positions
18 they held prior to entering into the Settlement Agreement.

19 **2. Change in Practices.** As part of the Settlement, Defendant agrees that
20 it will begin to compensate its non-exempt hourly employees for time spent
21 undergoing the security checks at its California facilities. To that end, Defendant
22 will install time capturing systems in the locations where its non-exempt employees
23 undergo the security checks to capture the time spent therein. As part of this
24 Settlement, Defendant intends to complete this implementation around August 1,
25 2021. Plaintiffs agree that the measures intended to be implemented by Defendant
26 reasonably, fairly and adequately address the primary concerns that caused them to
27 bring the Lawsuit and agree, on behalf of themselves, the Settlement Class
28 Members, and the State of California that the change in practices satisfied the

1 Defendant’s obligations under the Labor Code and IWC Wage Order 9 (“Wage
2 Order”) provisions at issue in these Lawsuits. The Plaintiffs further agree, on
3 behalf of themselves, the Settlement Class Members, the PAGA Settlement Class
4 Members, and the State of California not to sue for the provisions of the Labor
5 Code and Wage Order at issue in the Lawsuit so long as the change in practice
6 remains in place.

7 **3. Release by Settlement Class Members, PAGA Settlement Class**
8 **Members, and Plaintiffs.** Plaintiffs and every member of the Settlement Class
9 will fully release and discharge Defendant, and all of its past and present officers,
10 directors, shareholders, employees, agents, principals, heirs, representatives,
11 accountants, auditors, consultants, and their respective successors and predecessors
12 in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released
13 Parties”), as follows:

14 **A. Release of Class Claims:** All Participating Settlement Class
15 Members (as defined in Paragraph 5(B) below) will release all
16 claims, demands, rights, liabilities and causes of action pled in
17 the operative Consolidated Class Action Complaint, or which
18 could have been pled or could arise out of the facts pled in the
19 operative Consolidated Class Action Complaint arising between
20 December 12, 2015 and September 1, 2021 (the “Released Class
21 Claims”). The Released Class Claims include claims for:
22 (a) failure to provide meal and rest periods; (b) failure to
23 indemnify expenses; (c) failure to pay all wages at the correct
24 rates of pay; (d) failure to provide proper wage statements; (e)
25 waiting time penalties; and (f) all claims for unfair business
26 practices that could have been premised on the facts, claims,
27 causes of action or legal theories described above.
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B. Release of PAGA Claims: Separate and apart from the Released Class Claims specified in Paragraph 3(A) above, all PAGA Settlement Class Members will release all claims under PAGA as alleged in the Consolidated Class Action Complaint and/or any notices submitted by the Plaintiffs to the LWDA, to the extent that such claims were or could have been pled or could arise out of the facts pled in the Consolidated Class Action Complaint that arose between December 12, 2018 and September 1, 2021 (“PAGA Released Claims”). PAGA Released Claims include claims for civil penalties for alleged (a) failure to provide meal and rest periods; (b) failure to indemnify expenses; (c) failure to pay all wages at the correct rates of pay; (d) failure to provide proper wage statements; and (e) waiting time penalties. PAGA Settlement Class Members will receive their respective share of the PAGA Payments and will release all PAGA Released Claims regardless of whether or not they submit a valid and timely Request for Exclusion.

C. In light of their Class Representative Service Awards and other consideration given, Plaintiffs Ayala and Aviles each agree to release, in addition to the Released Class Claims and PAGA Released Claims described above, all claims, whether known or unknown, under federal, state or local law against the Released Parties, including but not limited to all claims related to or arising out of their employment with Defendant and the termination thereof. The Parties understand and agree that Plaintiffs Ayala and Aviles are not, by way of this release, releasing any workers’ compensation claims nor any other claims which cannot be released as a matter of law.

1 Notwithstanding the foregoing, Plaintiffs Ayala and Aviles each
2 understand that this release includes unknown claims and that
3 they are, as a result, waiving all rights and benefits afforded by
4 Section 1542 of the California Civil Code, which provides:

5 A general release does not extend to claims which
6 the creditor or releasing party does not know or
7 suspect to exist in his or her favor at the time of
8 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.

9 **4. Gross Settlement Amount.** As consideration, Defendant agrees to
10 pay a “Gross Settlement Amount” of One Million Eight Hundred Thousand Dollars
11 and Zero Cents (\$1,800,000.00) in full and complete settlement of the Lawsuit, as
12 follows:

- 13 **A.** The Parties have agreed to engage Phoenix as the “Settlement
14 Administrator” to administer this Settlement.
- 15 **B.** The Gross Settlement Amount shall be deposited with the
16 Settlement Administrator within thirty (30) calendar days of the
17 Effective Date (which, for this purpose, shall be defined as the
18 later of (1) the date on which the Court enters an Order granting
19 Final Approval of the Settlement Agreement or, (2) if there are
20 objections to the Settlement, the later of: (i) the last date on
21 which any appeal might be filed (i.e., no later than sixty (60)
22 calendar days following entry of judgment), or (ii) the
23 successful resolution of any appeal(s), including expiration of
24 any time to seek reconsideration or further review.
- 25 **C.** The Gross Settlement Amount includes:
 - 26 (1) All payments (including interest) to the Settlement Class;
 - 27 (2) All costs of the Settlement Administrator and settlement
28 administration, which are anticipated to be no greater than

1 § 2699(i), seventy-five percent (75%) of such penalties, or
 2 Thirty Thousand Dollars and Zero Cents (\$30,000.00)
 3 will be payable to the Labor & Workforce Development
 4 Agency (“LWDA”), and the remaining twenty-five
 5 percent (25%), or Ten Thousand Dollars and Zero Cents
 6 (\$10,000.00), will be payable to PAGA Settlement Class
 7 Members as the “PAGA Amount,” which PAGA Amount
 8 will be distributed as described below.

9 **D. Escalator Clause.** It is estimated that as of March 31, 2021,
 10 there are approximately 2,392 Class Members who worked
 11 187,952 workweeks during the period of December 12, 2015
 12 through March 31, 2021. On or before the date that is five (5)
 13 court days before the hearing on the motion for preliminary
 14 approval, Defendant will provide a declaration under penalty of
 15 perjury confirming the number of Class members and
 16 workweeks between December 12, 2015 and March 31, 2021.
 17 The Gross Settlement Amount will increase proportionally with
 18 added workweeks if the number of workweeks confirmed by
 19 Defendant is more than 6% greater than the estimate stated
 20 herein.

21 **E. Blow Up Clause.** The Parties and their counsel agree that they
 22 will not solicit or encourage individuals to opt out of the
 23 Settlement or to assert or pursue objections to the Settlement.
 24 However, if more than five percent (5%) of the Settlement Class
 25 Members submit timely Requests for Exclusion, Defendant shall
 26 have the exclusive right to void this Settlement at its option.
 27 Defendant shall make its election within fourteen (14) calendar
 28 days after the Settlement Administrator notifies the Parties of

1 the number of Requests for Exclusion received, which the
2 Settlement Administrator shall do within ten (10) calendar days
3 after the Response Deadline. If Defendant exercises this right to
4 rescind the Settlement, it shall pay all reasonable settlement
5 administration costs incurred by the Settlement Administrator to
6 that date.

7 **5. Payments to the Settlement Class.** Settlement Class Members are
8 not required to submit a claim form to receive a payment (“Individual Settlement
9 Award”) from the Settlement. Individual Settlement Awards will be determined
10 and paid as follows:

11 **A.** The Settlement Administrator shall first deduct from the Gross
12 Settlement Amount the amounts approved by the Court for Class
13 Counsel’s attorneys’ fees, Class Counsel’s costs and expenses,
14 Plaintiffs’ Class Representative Service Awards, Defendant’s
15 employer share of the payroll taxes, the Settlement
16 Administrator’s fees and expenses for administration, and the
17 total amount designated as PAGA civil penalties. The
18 remaining amount shall be known as the “Net Settlement
19 Amount.”

20 **B.** From the Net Settlement Amount, the Settlement Administrator
21 will calculate each Settlement Class Member’s Individual
22 Settlement Award based on the following formula: each
23 Settlement Class Member who does not submit a valid and
24 timely Request for Exclusion as set forth in Paragraph 10(C)
25 below (“Participating Settlement Class Members”) shall receive
26 a proportionate settlement share based upon the workweeks
27 employed by Defendant during the Class Period, the numerator
28 of which is the Settlement Class Member’s workweeks during

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the Class Period and the denominator of which is the total workweeks worked by all Participating Settlement Class Members who worked during the Class Period.

C. The Settlement Administrator shall distribute to the LWDA the 75% of the amount allocated to PAGA civil penalties pursuant to Paragraph 4(C)(6) above. In addition, the Settlement Administrator shall allocate the PAGA Amount as follows. Each PAGA Settlement Class Member shall receive a portion of the PAGA Amount proportionate to the number of workweeks worked during the PAGA Settlement Period, the numerator of which is the PAGA Settlement Class Member’s gross number of workweeks worked during PAGA Settlement Period and the denominator of which is the total number of workweeks worked by all PAGA Settlement Class Members during the PAGA Settlement Period.

D. Within ten (10) business days following Defendant’s deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Award amounts and provide the same to the Parties’ counsel for review and approval. Within five (5) business days of approval by the Parties’ counsel, the Settlement Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to Participating Settlement Class Members and PAGA Settlement Class Members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant’s counsel.

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E. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Eighty Percent (80%) as penalties and interest; and Twenty Percent (20%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

F. Defendant shall fully discharge its obligations under this Settlement Agreement through the remittance of the Gross Settlement Amount to the Settlement Administrator as set forth in Paragraph 4(B), regardless of whether checks representing Individual Settlement Awards are actually received and/or negotiated by Settlement Class Members. Once Defendant has complied with its obligations set forth in Paragraph 4(B), it will be deemed to have satisfied all terms and conditions under this Settlement Agreement, shall be entitled to all protections afforded to it under this Settlement Agreement, and shall have no further obligations under the terms of the Settlement Agreement, regardless of what occurs with respect to the further administration of the Settlement. Without prejudice to any other remedies, the Settlement Administrator shall hold Defendant harmless from and against all liabilities, claims, causes of

1 action, costs, and expenses (including legal fees and expenses)
2 arising out of any failure to timely or properly compensate
3 Settlement Class Members as provided for in this Settlement
4 Agreement.

5 **G.** Each Participating Settlement Class Member who receives an
6 Individual Settlement Award must cash the check(s) within one
7 hundred eighty (180) calendar days from the date the Settlement
8 Administrator mails it/them. One hundred twenty (120)
9 calendar days after the mailing of the settlement checks, the
10 Settlement Administrator shall mail a reminder notice to those
11 Participating Settlement Class Members who have not yet
12 negotiated their check. Any check that is not negotiated within
13 one hundred eighty (180) calendar days of mailing to a
14 Settlement Class Member shall be paid to the State Controller
15 Unclaimed Property Fund in the name of the Class Member who
16 does not timely negotiate his/her Individual Settlement Award
17 check. Checks to PAGA Settlement Class Members shall be
18 treated in the same manner.

19 **H.** Neither Plaintiffs nor Defendant shall bear any liability for lost
20 or stolen checks, forged signatures on checks, or unauthorized
21 negotiation of checks. Unless responsible by its own acts of
22 omission or commission, the same is true for the Settlement
23 Administrator.

24 **6. Attorneys' Fees and Costs.** Defendant will not object to Class
25 Counsel's request for a total award of attorneys' fees of one-third of the Gross
26 Settlement Amount, which is currently estimated to be Six Hundred Thousand
27 Dollars and Zero Cents (\$600,000.00). Additionally, Class Counsel will request an
28 award of actual costs and expenses as supported by declaration, in an amount not to

1 exceed One Hundred Forty-Five Thousand Dollars and Zero Cents (\$145,000.00)
2 from the Gross Settlement Amount. These amounts will cover any and all work
3 performed and any and all costs incurred in connection with this litigation,
4 including without limitation: all work performed and all costs incurred to date; and
5 all work to be performed and costs to be incurred in connection with obtaining the
6 Court's approval of this Settlement Agreement, including any objections raised and
7 any appeals necessitated by those objections. Class Counsel will be issued an IRS
8 Form 1099 by the Settlement Administrator when the Settlement Administrator
9 pays the fee award allowed by the Court. The payment of the Attorneys' Fees shall
10 be distributed by the Settlement Administrator as follows: 50% to the Aviles Class
11 Counsel and 50% to the Ayala Class Counsel. Payment of Attorneys' Costs shall
12 be made by the Settlement Administrator to each firm in the amount incurred by
13 each firm as set forth in their declaration and approved by the Court. Even in the
14 event that the Court reduces or does not approve the requested Attorneys' Fees or
15 Costs, Plaintiffs and Class Counsel shall not have the right to revoke this
16 Settlement, and it will remain binding, but Class Counsel retain the right to appeal a
17 reduction.

18 **7. Class Representative Service Award.** Defendant will not object to a
19 request for Class Representative Service Awards of up to Twenty Thousand Dollars
20 and Zero Cents (\$20,000.00) for each Plaintiff for a total of Forty Thousand Dollars
21 and Zero Cents (\$40,000.00) for their time and risk in prosecuting this case, and
22 their service to the Settlement Class. This award will be in addition to Plaintiffs'
23 respective Individual Settlement Award as a Settlement Class Member, if any, and
24 shall be reported on an IRS Form 1099 issued by the Settlement Administrator.
25 Even in the event that the Court reduces or does not approve the requested Class
26 Representative Service Award, Plaintiffs shall not have the right to revoke this
27 Settlement, and it will remain binding.

28 **8. Settlement Administrator.** Defendant will not object the

1 appointment of Phoenix as Settlement Administrator. Defendant will not object to
2 Plaintiffs' request to the Court to pay up to Thirty Thousand Dollars and Zero Cents
3 (\$30,000.00) for its services from the Gross Settlement Amount. The Settlement
4 Administrator shall be responsible for sending notices and for calculating
5 Individual Settlement Awards and preparing all checks and mailings, calculating
6 and remitting Defendant's share of taxes payable on the wages, and other duties as
7 described in this Settlement Agreement. The Settlement Administrator shall be
8 authorized to pay itself from the Gross Settlement Amount by Class Counsel only
9 after Individual Settlement Awards have been mailed to all participating Settlement
10 Class Members.

11 **9.** Within a reasonable time after execution of this Settlement Agreement
12 by the Parties and after providing Defendant the opportunity to review the draft
13 Preliminary Approval papers for at least five (5) business days prior to filing,
14 Plaintiffs shall apply to the Court for the entry of an Order:

- 15 **A.** Conditionally certifying the Settlement Class for purposes of
16 this Settlement Agreement;
- 17 **B.** Appointing David G. Spivak of The Spivak Law Firm and
18 Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit
19 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP
20 as Class Counsel for settlement purposes only;
- 21 **C.** Appointing Plaintiffs Ayala and Aviles as Class Representatives
22 for the Settlement Class Members for settlement purposes only;
- 23 **D.** Approving Phoenix as Settlement Administrator;
- 24 **E.** Preliminarily approving this Settlement Agreement and its terms
25 as fair, reasonable, and adequate;
- 26 **F.** Preliminarily approving Defendant's revisions to its practices as
27 conforming to the law;
- 28 **G.** Approving the form and content of the Notice Packet, which is

1 Defendant provides to the Settlement Administrator, along with
2 any updated contact information identified by the Settlement
3 Administrator, as explained below, shall be used solely to
4 administer the Notice Packet and Settlement Award process
5 described herein, shall remain confidential, and shall not be
6 disclosed to anyone (including Class Counsel), except pursuant
7 to the express written authorization of Defendant or the
8 individual in question, by order of the Court, or to the extent
9 necessary to fulfill the Settlement Administrator's reporting
10 obligations hereunder.

11 **B.** Within ten (10) business days from receipt of this information,
12 the Settlement Administrator shall: (i) run the names of all
13 Settlement Class Members through the National Change of
14 Address ("NCOA") database to determine any updated
15 addresses for Settlement Class Members; (ii) update the address
16 of any Settlement Class Member for whom an updated address
17 was found through the NCOA search; (iii) calculate the
18 estimated Individual Settlement Award for each Settlement
19 Class Member; and (iv) mail a Notice Packet to each Settlement
20 Class Member at his or her last known address or at the updated
21 address found through the NCOA search, and retain proof of
22 mailing.

23 **C. Requests for Exclusion.** Any Settlement Class Member who
24 wishes to opt-out of the Settlement must complete and mail a
25 Request for Exclusion (defined below) to the Settlement
26 Administrator within forty-five (45) calendar days of the date of
27 the initial mailing of the Notice Packets (the "Response
28 Deadline"). The Notice Packet shall state that Settlement Class

1 Members who wish to exclude themselves from the Settlement
2 must submit a Request for Exclusion by the Response Deadline.
3 The Request for Exclusion must: (1) contain the name, address,
4 telephone number and the last four digits of the Social Security
5 number of the Settlement Class Member; (2) contain a statement
6 that the Settlement Class Member wishes to be excluded from
7 the Settlement; (3) be signed by the Settlement Class Member;
8 and (4) be postmarked by the Response Deadline and mailed to
9 the Settlement Administrator at the address specified in the
10 Class Notice. If the Request for Exclusion does not contain the
11 information listed in (1)-(3), it will not be deemed valid for
12 exclusion from the Settlement, except a Request for Exclusion
13 not containing a Class Member's telephone number and/or last
14 four digits of the Social Security number will be deemed valid.
15 The date of the postmark on the Request for Exclusion shall be
16 the exclusive means used to determine whether a Request for
17 Exclusion has been timely submitted. Any Settlement Class
18 Member who requests to be excluded from the Settlement Class
19 will not be entitled to any recovery from the Net Settlement
20 Amount and will not be bound by the terms of the Settlement or
21 have any right to object, appeal or comment thereon.
22 Notwithstanding the foregoing, the PAGA settlement and
23 release of the PAGA Released Claims will apply to all PAGA
24 Settlement Class Members whether or not they exclude
25 themselves from the class action settlement. PAGA Settlement
26 Class Members who submit a valid and timely Request for
27 Exclusion shall still be entitled to their portion of the PAGA
28 Amount described above, and will release all PAGA Released

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Claims, whether they submit a valid and timely Request for Exclusion or not.

D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant’s counsel, and Class Counsel will then be responsible to file all such objections with the Court). Defendant’s counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class Member’s full name and current address, as well as contact information for any attorney representing the objecting Settlement Class Member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Alternatively, members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing. Members of the Settlement class who request exclusion may not object to the Settlement.

E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class Member shall disclose the amount of the Settlement Class Member’s estimated Individual Settlement Award as well the Settlement Class Member’s number of Workweeks worked during the Class Period.

1 Settlement Class Members will have the opportunity, should
2 they disagree with Defendant’s records regarding the
3 information stated in the Notice Packet, to provide
4 documentation and/or an explanation to show contrary
5 information. Any such dispute, including any supporting
6 documentation, must be mailed to the Settlement Administrator
7 and postmarked by the Response Deadline. If there is a dispute,
8 the Settlement Administrator will consult with the Parties to
9 determine whether an adjustment is warranted. The Settlement
10 Administrator shall determine the eligibility for, and the
11 amounts of, any Individual Settlement Awards under the terms
12 of this Settlement Agreement. The Settlement Administrator’s
13 determination of the eligibility for and amount of any Individual
14 Settlement Award shall be binding upon the Settlement Class
15 Member and the Parties.

16 **F.** Any Notice Packets returned to the Settlement Administrator as
17 non-delivered on or before the Response Deadline shall be re-
18 mailed to the forwarding address affixed thereto. If no
19 forwarding address is provided, the Settlement Administrator
20 shall make reasonable efforts, including utilizing a “skip trace,”
21 to obtain an updated mailing address within five (5) business
22 days of receiving the returned Notice Packet. If an updated
23 mailing address is identified, the Settlement Administrator shall
24 resend the Notice Packet to the Settlement Class Member
25 immediately, and in any event within three (3) business days of
26 obtaining the updated address. The address identified by the
27 Settlement Administrator as the current mailing address shall be
28 presumed to be the best mailing address for each Settlement

1 Class Member. It will be conclusively presumed that, if an
2 envelope so mailed has not been returned within thirty (30)
3 calendar days of the mailing, the Settlement Class Member
4 received the Notice Packet. Settlement Class Members to whom
5 Notice Packets are re-mailed after having been returned as
6 undeliverable to the Settlement Administrator shall have
7 fourteen (14) calendar days from the date of re-mailing, or until
8 the Response Deadline has expired, whichever is later (but in no
9 event more than fourteen (14) calendar days after the Response
10 Deadline), to submit a Request for Exclusion, Objection, or
11 dispute. Notice Packets that are re-mailed shall inform the
12 recipient of this adjusted deadline. If a Settlement Class
13 Member's Notice Packet is returned to the Settlement
14 Administrator more than once as non-deliverable, then an
15 additional Notice Packet shall not be mailed. Nothing else shall
16 be required of, or done by, the Parties, Class Counsel, or
17 Defendant's Counsel to provide notice of the proposed
18 settlement.

19 **11. Final Approval.** Following preliminary approval and the close of the
20 period for filing requests for exclusion, objections, or disputes under this Settlement
21 Agreement and after providing Defendant the opportunity to review the draft Final
22 Approval papers for at least five (5) business days prior to filing, Plaintiffs shall
23 apply to the Court for entry of an Order:

- 24 **A.** Granting final approval to the Settlement Agreement and
25 adjudging its terms to be fair, reasonable, and adequate;
26 **B.** Approving Plaintiff's and Class Counsel's application for
27 attorneys' fees and costs, Class Representative Service Awards,
28 and settlement administration costs; and

1 C. Entering judgment pursuant to California Rule of Court 3.769.

2 **12. Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT

3 (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”

4 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE

5 ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES

6 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO

7 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG

8 THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR

9 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR

10 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON

11 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES

12 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS

13 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED

14 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND

15 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN

16 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO

17 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY

18 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER

19 PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY

20 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER

21 TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE

22 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY

23 OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION

24 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S

25 OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH

26 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE

27 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX

28 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION

1 CONTEMPLATED BY THIS AGREEMENT

2 **13. Non-Admission of Liability.** Nothing in this Settlement Agreement
3 shall operate or be construed as an admission of any liability or that class
4 certification is appropriate in any context other than this Settlement. Each of the
5 Parties has entered into this Settlement Agreement to avoid the burden and expense
6 of further litigation. Pursuant to Federal Evidence Code Section 408 and California
7 Evidence Code Section 1152, this Settlement Agreement is inadmissible in any
8 proceeding, except a proceeding to approve, interpret, or enforce this Settlement
9 Agreement. If Preliminary Approval or Final Approval does not occur, the Parties
10 agree that this Settlement Agreement is void, but remains protected by Federal
11 Evidence Code Section 408 and the California Evidence Code Section 1152.

12 **14. Stay of Lawsuit.** The Parties agree that upon the signing of this
13 Agreement that the Lawsuit is stayed for all purposes except for matters related to
14 the approval of the Settlement.

15 **15. Return to Status Quo Ante.** In the event the Court does not grant
16 Preliminary or Final Approval of the Settlement, or if the Settlement approval is
17 reversed on appeal, the Parties shall return to their respective positions in which
18 they were on April 23, 2021, the Lawsuit will be reactivated, and the Parties will
19 cooperate in stipulating to hearing schedule for the motion for class certification.

20 **16. No Prior Assignments.** Plaintiffs and Class Counsel represent,
21 covenant, and warrant that they have not directly or indirectly encumbered,
22 assigned, transferred, or otherwise given away any of the claims, demands, causes
23 of actions, or rights that they are releasing by signing this Settlement Agreement,
24 nor has any of them purported to do so.

25 **17. Non-disclosure and Non-publication.** Plaintiffs and Class Counsel
26 agree not to disclose or publicize the Settlement Agreement contemplated herein,
27 the fact of the Settlement Agreement, its terms or contents, or the negotiations
28 underlying the Settlement Agreement, in any manner or form, directly or indirectly,

1 to any person or entity, except to Settlement Class Members and as shall be
2 contractually required to effectuate the terms of the Settlement Agreement as set
3 forth herein. However, for the limited purpose of allowing Class Counsel to prove
4 adequacy as class counsel/settlement in other Lawsuits, Class Counsel may disclose
5 the names of the Parties in these Lawsuits, the venue/case number of the Lawsuits,
6 and a general description of the Lawsuits and settlement (limited to the written
7 court record), to a court in a declaration by Class Counsel. The Settlement
8 Administrator shall be permitted to post court-filed documents, such as the motions
9 for approval, the motion for attorneys’ fees and costs, and the Judgment on a
10 website which shall be removed after the check cashing period has expired.

11 **18. Waiver and Amendment.** The Parties may not waive, amend, or
12 modify any provision of this Settlement Agreement except by a written agreement
13 signed by all of the Parties or their representatives, and subject to any necessary
14 Court approval. A waiver or amendment of any provision of this Settlement
15 Agreement will not constitute a waiver of any other provision.

16 **19. Notices.** All notices, demands, and other communications to be
17 provided concerning this Settlement Agreement shall be in writing and delivered by
18 receipted delivery and by e-mail at the addresses set forth below, or such other
19 addresses as either Party may designate in writing from time to time:

20 if to Defendant: Elizabeth (Lisa) A. Brown
21 Jen Svanfeldt
22 GBG LLP
23 633 West 5th Street, Suite 3330
24 Los Angeles, California 90071
lisabrown@gbglp.com
jensvanfeldt@gbglp.com

25 if to Plaintiffs: David G. Spivak
26 The Spivak Law Firm
27 16530 Ventura Blvd., Suite 203
28 Encino, CA 91436
david@spivaklaw.com
and

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Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
norm@bamlawca.com
kyle@bamlawca.com
aj@bamlawca.com

20. Cooperation. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

21. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the Lawsuits contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. Further, all terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

22. Counterparts. This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts, whether by facsimile, electronically or email and delivered electronically, which for purposes of this Settlement Agreement shall be accepted as an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: 06 / 23 / 2021

PLAINTIFF ERIC AYALA



By: _____
Plaintiff and Settlement Class Representative

DATED: _____

PLAINTIFF ADRIAN AVILES

By: _____
Plaintiff and Settlement Class Representative

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Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
norm@bamlawca.com
kyle@bamlawca.com
aj@bamlawca.com

20. Cooperation. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

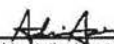
21. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the Lawsuits contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. Further, all terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

22. Counterparts. This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts, whether by facsimile, electronically or email and delivered electronically, which for purposes of this Settlement Agreement shall be accepted as an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: _____ PLAINTIFF ERIC AYALA

By: _____
Plaintiff and Settlement Class Representative

DATED: Jun 23, 2021 _____ PLAINTIFF ADRIAN AVILES

By:  _____
Adrian Aviles (Jun 23, 2021 17:20 PDT)
Plaintiff and Settlement Class Representative

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DATED: 6/25/2021 | 8:58 AM PDT


DEFENDANT UPS SUPPLY CHAIN SOLUTIONS, INC.

BY:  _____

APPROVED AS TO FORM:

DATED: 06 / 23 / 2021

THE SPIVAK LAW FIRM

By:  _____
David G. Spivak
Attorneys For Plaintiff ERIC AYALA

DATED: _____

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys For Plaintiff ADRIAN AVILES

DATED: _____

GBG LLP

BY: _____
ELIZABETH (LISA) A. BROWN
Attorneys for Defendant
UPS SUPPLY CHAIN SOLUTIONS, INC.

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DATED: 6/25/2021 | 8:58 AM PDT

DEFENDANT UPS SUPPLY CHAIN SOLUTIONS, INC.

DocuSigned by:

BY _____
50666DE7FECD4A6...

APPROVED AS TO FORM:

DATED: _____

THE SPIVAK LAW FIRM

By: _____
David G. Spivak
Attorneys For Plaintiff ERIC AYALA

DATED: 6/24/21

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys For Plaintiff ADRIAN AVILES

DATED: 6/25/2021

GBG LLP

By: 
ELIZABETH (LISA) A. BROWN
Attorneys for Defendant
UPS SUPPLY CHAIN SOLUTIONS, INC.

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC AYALA and ADRIAN AVILES, on behalf of
themselves and all others similarly situated,

Plaintiff(s),

vs.

UPS SUPPLY CHAIN SOLUTIONS, INC., a Delaware
corporation; UPS SUPPLY CHAIN SOLUTIONS
GENERAL SERVICES, INC., a Delaware corporation; and
DOES 1-10, inclusive,

Defendant(s).

Case No. 5:20-cv-00117-PSG-AFM

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. The estimated amount of your Individual Settlement Award is set forth on the accompanying Notice of Settlement Award. After final approval by the Court, the payment will be mailed to you at the same address as this Notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will retain your right to sue the Defendant. If you request exclusion, you will receive no money from the Settlement . However, if you are an PAGA Settlement Class Member who opts out, you will still be paid your allocation of the PAGA Payment and will remain bound by the release of the PAGA Released Claims regardless of whether you submit a request for exclusion. Instructions are set forth below.
Object	Write to the Court about why you do not like the settlement or appear at the Final Approval Hearing to make an oral objection. Directions are provided below.

Why should you read this notice?

The United States District Court for the Central District of California has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Eric Ayala, et al. v. UPS Supply Chain Solutions, Inc., et al.*, United States District Court, Central District of California Case No. 5:20-cv-00117-PSG-AFM (the "Lawsuit"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights. For purposes of this Notice, rights of the following individuals may be impacted:

“Settlement Class”: All current and former non-exempt employees who worked for Defendant UPS Supply Chain Solutions, Inc. (“Defendant” or “SCS”) in the Class Period (defined as December 12, 2015 to _____, 2021<<[insert date that is the earlier of (a) date of preliminary approval of this Settlement or (b) August 1, 2021]>>; and

“PAGA Settlement Class Members”: All members of the Settlement Class who were employed by Defendant in California during the PAGA Settlement Period (defined as December 12, 2018 through _____, 2021<<[insert date that is the earlier of (a) date of preliminary approval of this Settlement or (b) August 1, 2021]>>),

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

In their operative Consolidated Class Action Complaint, Plaintiffs Eric Ayala and Adrian Aviles (collectively, “Plaintiffs” or “Class Representatives”), individually and on behalf of all Settlement Class Members, allege that SCS violated the California Labor Code and California Business and Professions Code on account of its alleged failure to, *inter alia*: (1) Provide meal and rest periods in violation of California Labor Code §§ 226.7, 512, and 1198; (2) Indemnify work expenses in violation of California Labor Code §§ 1198 and 2802; (3) Pay all wages for all hours worked at the correct rates of pay in violation of California Labor Code §§ 510, 1194, 1197, and 1198; (4) Provide proper wage statements in violation of California Labor Code §226; and (5) Timely pay final wages in violation of California Labor Code §§ 201-203. The Plaintiffs also allege in the Consolidated Class Action Complaint that, as a result of the alleged Labor Code violations, Defendant engaged in unfair business practices in violation of California’s Unfair Competition Act, Bus. & Prof. Code §17200 et seq., and is liable for civil penalties pursuant to PAGA.

SCS denies that it has done anything wrong. SCS further denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of SCS, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiffs’ claims. However, to avoid additional expense, inconvenience, and interference with its business operations, the Parties have concluded that it is in their best interests and the interests of Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After SCS provided relevant information to each Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the parties.

The Class Representatives and their counsel–The Spivak Law Firm and Blumenthal Nordrehaug Bhowmik De Blouw LLP (collectively, “Class Counsel”)–support the Settlement. While Plaintiffs and Class Counsel believe that the claims alleged in this Lawsuit have merit, they also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Plaintiffs and Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Settlement Class Members.

If you are still employed by SCS, your decision about whether to participate in the Settlement will not affect your employment. California law and SCS’s policies strictly prohibit unlawful retaliation. SCS will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of the Settlement Class Member’s decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiffs / Settlement Class Members:	Attorneys for Defendant UPS Supply Chain Solutions, Inc.:
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<p>Attorneys for Plaintiff Eric Ayala/Settlement Class Members:</p> <p>THE SPIVAK LAW FIRM David G. Spivak david@spivaklaw.com 16530 Ventura Blvd., Suite 203 Encino, CA 91436 Toll free: (877) 203-9010 Telephone: (818) 582-3086 Facsimile: (2143) 634-2485</p> <p>Attorneys for Plaintiff Adrian Aviles/Settlement Class Members:</p> <p>BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP Norman B. Blumenthal norm@bamlawca.com Kyle R. Nordrehaug kyle@bamlawca.com 2255 Calle Clara La Jolla, CA 92037 Telephone: (858) 551-1223 Facsimile: (858) 551-1232</p>	<p>GBG LLP Elizabeth (Lisa) A. Brown lisabrown@gbgllp.com Jen Svanfeldt jensvanfeldt@gbgllp.com Carlos I. Martinez-Garcia carlosmartinez@gbgllp.com 633 West 5th Street, Suite 3330 Los Angeles, California 90071 Tel: (213) 358-2810 Fax: (213) 995-6382</p>
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What are the terms of the Settlement?

On [INSERT DATE OF PRELIMINARY APPROVAL], the Court preliminarily certified the Settlement Class for settlement purposes only. The precise definition of the class approved for settlement can be found above and in the Settlement Agreement. Settlement Class Members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against SCS as described below. PAGA Settlement Class Members will be bound by the Settlement with respect to the PAGA claim regardless of whether they opt out of the Settlement.

SCS has agreed to pay \$1,800,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, settlement administration costs, attorneys’ fees and expenses, Class Representatives’ Service Awards, and payment to the Labor Workforce Development Agency (“LWDA”). As part of the Settlement, SCS has also agreed to a change in practices to install time capturing systems in the locations where non-exempt employees undergo security checks.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix [redacted] to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$30,000 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$600,000, as reasonable compensation for the work Class Counsel performed and will

continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$145,000 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Awards to Class Representatives. Class Counsel will ask the Court to award each Plaintiff a service award in the amount of \$20,000 for a total of \$40,000 to compensate them for their services and extra work provided on behalf of the Settlement Class Members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$40,000 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act (“PAGA”). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Thirty Thousand Dollars (\$30,000) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or Ten Thousand Dollars (\$10,000), will be payable to PAGA Settlement Class Members as the “PAGA Amount,” which PAGA Amount will be distributed as described below.

Calculation of Individual Settlement Class Members’ Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below).

The NSA is estimated at approximately [REDACTED], to be shared among an estimated [REDACTED] Settlement Class Members. The NSA will be divided as follows: each Settlement Class Member who does not submit a valid and timely Request for Exclusion, as defined in the Settlement Agreement (“Participating Settlement Class Members”) shall receive a proportionate settlement share based upon the workweeks employed by Defendant during the Class Period, the numerator of which is the Settlement Class Member’s workweeks during the Class Period and the denominator of which is the total workweeks worked by all Participating Settlement Class Members who worked during the Class Period (“Individual Settlement Award”).

In addition, the PAGA Amount will be allocated as follows: Each PAGA Settlement Class Member shall receive a portion of the PAGA Amount proportionate to the number of workweeks worked during the PAGA Settlement Period, as defined in the Settlement Agreement, the numerator of which is the PAGA Settlement Class Member’s gross number of workweeks worked during the PAGA Settlement Period and the denominator of which is the total number of workweeks worked by all PAGA Settlement Class Members during the PAGA Settlement Period.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Awards will be mailed to all Participating Settlement Class Members, and PAGA Amounts will be mailed to all PAGA Settlement Class Members regardless of whether they submit a Request for Exclusion.

Payment by SCS of Gross Settlement Amount. The Gross Settlement Amount shall be paid by SCS as follows: The Gross Settlement Amount shall be deposited with the Settlement Administrator within thirty (30) calendar days of the Effective Date (which, for this purpose, shall be defined as the later of (1) date on which the Court enters an Order granting Final Approval of the Settlement Agreement or, (2) the later of: (i) the last date on which any appeal might be filed (i.e., no later than 60 calendar days following entry of judgment) or (ii) the successful resolution of any appeal(s), including expiration of any time to seek reconsideration or further review.

Within ten (10) business days following SCS’s deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Awards and provide the same to the Parties’ counsel for review and approval. Within five (5) business days of approval by the Parties’ counsel, the Settlement Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class Members and PAGA Settlement Class Members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant’s counsel.

Allocation and Taxes. For tax purposes, each Individual Settlement Award shall be allocated as follows: eighty percent (80%) as penalties and interest; and twenty percent (20%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

Release. If the Court approves the Settlement, the following releases will be in effect:

Release of Class Claims: All Participating Settlement Class Members (as defined in the Settlement Agreement) will release all claims, demands, rights, liabilities and causes of action pled in the operative Consolidated Class Action Complaint, or which could have been pled in the operative Consolidated Class Action Complaint based on the facts alleged, that arose between December 12, 2015 and September 1, 2021 (the “Released Class Claims”). The Released Class Claims include claims for: (a) failure to provide meal and rest periods; (b) failure to indemnify expenses; (c) failure to pay all wages at the correct rates of pay; (d) failure to provide proper wage statements; (e) waiting time penalties; and (f) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above.

Release of PAGA Claims: Separate and apart from the Released Claims specified above, all PAGA Settlement Class Members will release all claims under PAGA as alleged in the Consolidated Class Action Complaint and/or any notices submitted by the Plaintiffs to the LWDA, to the extent that such claims were or could have been pled or could arise out of the facts pled in the Consolidated Class Action Complaint that arose between December 12, 2018 and September 1, 2021 (“PAGA Released Claims”). PAGA Released Claims include claims for civil penalties for alleged (a) failure to provide meal and rest periods; (b) failure to indemnify expenses; (c) failure to pay all wages at the correct rates of pay; (d) failure to provide proper wage statements; and (e) untimely wages. PAGA Settlement Class Members will receive their respective share of the PAGA Payments and will release all PAGA Released Claims regardless of whether or not they submit a valid and timely Request for Exclusion.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period (as explained above), and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks you worked during the relevant period (as explained above). The information contained in SCS’s records regarding all of these factors, along with your estimated award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. The Settlement Administrator’s decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written Request for Exclusion, which must: 1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class Member; (2) contain a statement that the Settlement Class Member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked by the **<<RESPONSE DEADLINE>>**.

Send the Request for Exclusion directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement

Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement other than the PAGA Amount, which shall be distributed regardless of any submission of Request for Exclusion. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement. Likewise, **do not submit both a Dispute and an Objection.** If you submit both and your objection is rejected by the Court, the Dispute will be invalid and you will receive the Individual Settlement Award as determined by the Settlement Administrator from Defendant's records.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written objection to the Settlement Administrator. Your written objection must: (1) contain the objecting Settlement Class Member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class Member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the **<<RESPONSE DEADLINE>>**. Alternatively, members of the Settlement Class who do not request exclusion may also orally object to the Settlement at the Final Approval Hearing.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Courtroom 6A of the United States District Court, Central District of California, located at First Street Courthouse, 350 West 1st Street, 6th Floor, Los Angeles, California 90012. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before **<<RESPONSE DEADLINE>>**. All objections or other correspondence must state the name and number of the case, which is: *Eric Ayala, et al. v. UPS Supply Chain Solutions, Inc., et al., United States District Court, Central District of California* Case No. 5:20-cv-00117-PSG-AFM.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **<<FINAL APPROVAL HEARING DATE/TIME>>**, in Courtroom 6A of the United States District Court, Central District of California, located at First Street Courthouse, 350 West 1st Street, 6th Floor, Los Angeles, California 90012. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Award to each Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class Members. **You are not required to attend the Final Approval Hearing, although any Settlement Class Member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Archives and Records Center, 225 East Temple Street, Suite TS-134, Los Angeles, CA 90012, during regular court hours. You may also contact Settlement Administrator or Class Counsel using the contact information listed above for more information. The Settlement Agreement, the motion for final approval, the motion for attorneys' fees and costs, and the Court's Orders are posted on the Settlement Administrator's website at: **<< _____ >>**.

PLEASE DO NOT CALL OR WRITE THE COURT, SCS, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**. These deadlines will be strictly enforced.

ADDRESS CHANGES

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator. To update your mailing address, please contact the Settlement Administrator at [phone number].

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

NOTICE OF INDIVIDUAL SETTLEMENT AWARD

ERIC AYALA AND ADRIAN AVILES VS. UPS SUPPLY CHAIN SOLUTIONS, INC. ET AL.
UNITED STATES DISTRICT COURT - CENTRAL DISTRICT OF CALIFORNIA, CASE NO. 5:20-CV-00117-PSG-AFM

Please complete, sign, date and return this form to _____ <<ADMINISTRATOR CONTACT INFO>> ONLY IF (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City State Zip Code

(III) Information Used to Calculate Your Individual Settlement Award:

According to UPS Supply Chain Solutions, Inc.'s ("SCS") records, you were employed for a total of _____ workweeks by UPS in one of the following subclasses:

"Settlement Class": All current and former employees who worked for SCS in California during the Class Period (defined as the time period of December 12, 2015 through <<the earlier of (a) date of preliminary approval of this Settlement or (b) August 1, 2021>> [administrator should just enter the date]; and

"PAGA Settlement Class": All current and former employees who worked for SCS in California during the PAGA Settlement Period (defined as the time period of <<December 12, 2018 through the earlier of (a) date of preliminary approval of this Settlement or (b) August 1, 2021>> [administrator should just enter the date].

Based on the above, your Individual Settlement Award is estimated to be \$ _____.

(IV) Dispute of Calculation: If you disagree with the information contained in Section (III) above, please explain why in the space provided below and include copies of any supporting documentation with this form:

If you dispute the above information from SCS's records, SCS's records will control unless you are able to provide documentation that establishes that SCS's records are mistaken. If there is a dispute about whether SCS's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Class Action Settlement" that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#100(8/27)

CIVIL MINUTES - GENERAL

Case No. EDCV 20-117 PSG (AFMx)

Date August 24, 2021

Title Eric Ayala v. UPS Supply Chain Solutions, Inc. et al

Present: The Honorable Philip S. Gutierrez, United States District Judge

Wendy Hernandez

Not Reported

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

Proceedings (In Chambers): The Court GRANTS the motion for preliminary approval.

Before the Court is a motion for preliminary approval of class action settlement filed by Plaintiffs Eric Ayala (“Ayala”) and Adrian Aviles (“Aviles”) (collectively, “Plaintiffs”). *See generally* Dkt. # 100, (“*Mot.*”). Defendant UPS Supply Chain Solutions, Inc. (“Defendant”) does not oppose the motion. The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. Having considered the moving papers, the Court **GRANTS** the motion.

I. Background

A. Factual and Procedural History

After two separately filed class actions were removed and consolidated, Plaintiffs filed a consolidated class action complaint on May 1, 2020. *See generally Consolidated Complaint* Dkt. # 41 (“*Compl.*”). Plaintiffs alleged various violations of the California Labor Code for: (1) failure to provide meal and rest periods; (2) failure to indemnify; (3) failure to pay wages at the correct rates; (4) failure to provide proper wage statements; and (5) waiting time penalties. *See generally id.* Plaintiffs also brought a cause of action under § 17200 of the California Business and Profession’s Code for unfair business practices and requested civil penalties under California’s Private Attorney General Act (“PAGA”). *See generally id.* On May 22, 2020, Defendant answered. *See generally* Dkt. # 46.

The parties then conducted significant discovery, including inspection of hundreds of documents and other relevant materials; hiring three expert witnesses to analyze potential class-wide damages; extensive data collection and analysis; analysis of the defenses and merits; and extensive formal discovery, which included 11 depositions. *Declaration of Kyle Nordrehaug,*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 20-117 PSG (AFMx)	Date	August 24, 2021
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Dkt. # 100-2 (“*Nordrehaug Decl.*”), ¶¶ 15–16; *Declaration of David Spivak*, Dkt. # 100-3 (“*Spivak Decl.*”), ¶ 10; *see also* Dkts. # 43–55. Plaintiffs also filed, and Defendant opposed, a motion to certify the class. *See generally* Dkts. # 56, 73.

In early 2021, while the certification motion was pending, the parties attempted to mediate before mediator Lisa Klerman but were unsuccessful. *Nordrehaug Decl.* ¶ 17; *Spivak Decl.* ¶ 8. The parties engaged in a second mediation session before mediator Lou Marlin and reached an agreement through Mr. Marlin’s proposal. *Nordrehaug Decl.* ¶ 17; *Spivak Decl.* ¶ 10. The proposal principally settled the matter on April 23, 2021, and the parties spent several months negotiating the terms of the settlement, which were finalized in the Settlement Agreement (“Settlement”) now before the Court for approval. *Nordrehaug Decl.* ¶ 17; *see generally Joint Stipulation of Class Action Settlement*, Dkt. #100-2, Ex. 1 (“Settlement”).

B. Settlement Terms

The settlement class (the “Class” or “Class Members”) is defined as: “All individuals who are or previously were employed by Defendant in California as non-exempt employees during the Class Period.” *Settlement* ¶ 1. The Settlement divides the class into two separate periods, the “Class Period” and the “PAGA Settlement Period.” *Id.* The “Class Period” is between December 12, 2015 and August 1, 2021, and the “PAGA Settlement Period” is between December 12, 2018 and August 1, 2021. *See id.*

Defendants agreed to pay \$1,800,000.00, inclusive of interest, settlement administration fees, payroll taxes, class representative service awards, attorneys’ fees, and PAGA civil penalties. *Id.* ¶ 4. The average recovery for each class member will be approximately \$400 before payroll taxes. *See id.* As part of the settlement, Defendant also agreed to implement a key policy change—paying its non-exempt hourly employees for time spent going through security checkpoints in its California facilities. *Id.* ¶ 2.

Plaintiffs seek the Court’s preliminary approval of the proposed Settlement. *See generally Mot.* Although not clearly requested in the notice of motion or proposed order, Plaintiffs appear to request that the Court: (1) grant preliminary approval of the Settlement; (2) conditionally certify the proposed Class for settlement purposes; (3) appoint Plaintiffs Ayala and Aviles as Class Representatives; (4) appoint Blumenthal Nordrehaug Bhowmik De Blouw LLP and The Spivak Law Firm as Class Counsel; (5) schedule a hearing date for final approval of the settlement and entry of judgment; (6) appoint Phoenix Settlement Administrators as the Settlement Administrator; and (7) approve the proposed notice and opt-out form for the Class Members. *See Settlement* ¶ 9.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 20-117 PSG (AFMx)	Date	August 24, 2021
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II. Class Certification for Settlement Purposes

When parties settle an action prior to class certification, the Court is obligated to “peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). Preliminary approval of a class settlement is generally a two-step process. First, the Court must assess whether a class exists. *Id.* (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Second, the Court must determine “whether [the] proposed settlement is fundamentally fair, adequate, and reasonable.” *Id.* (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)) (internal quotation marks omitted). The decision to approve or reject a settlement is within the Court’s discretion. *Hanlon*, 150 F.3d at 1026.

A. Legal Standard

Parties seeking certification of a settlement-only class must still satisfy the Federal Rule of Civil Procedure 23 standards. *See Hanlon*, 150 F.3d at 1019–24. Under Rule 23, a plaintiff must satisfy the four prerequisites of Rule 23(a) and demonstrate that the action is maintainable under Rule 23(b). *See Amchem*, 521 U.S. at 613–14. The four prerequisites of Rule 23(a) are: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See Fed. R. Civ. P. 23(a)*. Plaintiffs seek certification under Rule 23(b)(3), *see generally Mot.*, which requires that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed R. Civ. P. 23(b)(3).

B. Discussion

i. *Numerosity*

The first requirement for maintaining a class action under Rule 23(a) is that the class is “so numerous that joinder of all members would be impracticable.” Fed. R. Civ. P. 23(a)(1). Courts generally presume numerosity when there are at least forty members in the proposed class. *See Charlebois v. Angels Baseball, LP*, No. SACV 10-0853 DOC (ANx), 2011 WL 2610122, at *4 (C.D. Cal. June 30, 2011).

Here, the Class is composed of approximately 2,392 individuals, which is sufficiently numerous for settlement purposes. *See Mot.* 20:13–22; *Nordrehaug Decl.* ¶ 26(a); *Spivak Decl.* ¶ 16. Therefore, numerosity is satisfied.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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ii. *Commonality*

To fulfill the commonality requirement, Plaintiffs must establish questions of law or fact common to the class as a whole. *See* Fed. R. Civ. P. 23(a)(2). The class claims must depend on a common contention that “is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). “What matters to class certification . . . is not the raising of common ‘questions’—even in droves—but rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.” *Id.* (internal quotation marks omitted) (emphasis omitted). For the purposes of Rule 23(a)(2), even a single common question satisfies the requirement. *See id.* at 359; *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 957 (9th Cir. 2013) (citing *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012)).

Here, Plaintiffs allege that “Defendant engaged in uniform practices” from which the following common questions arose: (1) whether Defendant failed to pay wages for off the clock work while waiting to clear security checkpoints; (2) whether Defendants failed to provide or pay for meal and rest breaks; (3) whether Defendant failed to provide accurate wage statements; and (4) whether Defendant failed to indemnify and reimburse its employees. *Mot.* 21:8–17; *Nordrehaug Decl.* ¶ 26(b); *Spivak Decl.* ¶ 17. Plaintiffs contend that common legal and factual issues would arise in determining the legality of these policies and practices. *See Mot.* 21:8–17. The Court agrees. *See Dukes*, 564 U.S. at 350. Accordingly, the commonality requirement is satisfied.

iii. *Typicality*

Typicality requires a showing that the named plaintiffs are members of the class they represent and that their claims are “reasonably co-extensive with those of absent class members,” but not necessarily “substantially identical.” *Hanlon*, 150 F.3d at 1020; *see* Fed. R. Civ. P. 23(a)(3). The test of typicality “is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)) (internal quotation marks omitted). The typicality and commonality requirements somewhat overlap. *See Gen. Tel. Co. Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

Here, Plaintiffs allege that they and the Class Members worked for Defendant, were subjected to Defendant’s uniform policies and procedures, and suffered the same violations as a

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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result of these policies and procedures. *Mot.* 21:19–22:9; *Nordrehaug Decl.* ¶ 26(c); *Spivak Decl.* ¶ 18. Thus, Plaintiffs’ claims and the claims of the absent Class Members arise from the same course of conduct by Defendant, involve the same issues, and are based on the same legal theories. *See id.* Accordingly, the typicality requirement is satisfied.

iv. Adequacy

The final requirement of Rule 23(a) is that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The Ninth Circuit has indicated that “[t]he proper resolution of this issue requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000).

Here, Plaintiffs have no apparent conflicts of interest between themselves and the Class Members. *Mot.* 23:1–8; *Nordrehaug Decl.* ¶ 26(d); *Spivak Decl.* ¶ 19. Plaintiffs share common interests with the other Class Members, as they were all employed by Defendant and subject to the same uniform and systematic employment practices, and Plaintiffs and Class Members seek monetary relief under the same set of facts and theories. *Mot.* 21:15–24; *Nordrehaug Decl.* ¶ 26(d); *Spivak Decl.* ¶ 19.

Additionally, Plaintiffs’ attorneys appear qualified and committed to representing the Class. They have expended considerable time and effort on this case by conducting discovery, drafting motions, analyzing damages, and negotiating with Defendant. *Mot.* 21:24–28; *Nordrehaug Decl.* ¶ 26(d); *Spivak Decl.* ¶ 19. Plaintiffs’ attorneys have extensive experience handling more than 100 wage and hour class actions and have previously served as class counsel in numerous cases. *Mot.* 21:27–28; *Nordrehaug Decl.* ¶¶ 26(d), 27; *Spivak Decl.* ¶ 19. Accordingly, the Court concludes that adequacy is satisfied.

v. Predominance and Superiority

Having concluded that the Class satisfies the Rule 23(a) factors, the Court now turns to Rule 23(b)(3). Rule 23(b)(3) provides that a class may be certified where common questions of law or fact predominate over individual questions and a class action is the superior method for adjudicating the controversy as a whole. The predominance aspect specifically “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. “When common questions present a significant aspect of the case and they can

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be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022 (internal quotation marks omitted).

As for predominance, Plaintiffs allege that their theories of liability arose from Defendant’s “uniform and systematic employment policies” applicable to the entire Class, and the only individualized questions relate to the extent of damages. *See Mot.* 23:23–24:6; *Nordrehaug Decl.* ¶ 26(e). Claims based on this type of commonly applied policy are generally sufficient for purposes of satisfying the requirements of Rule 23(b)(3). *See, e.g., Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 473 (E.D. Cal. 2009) (finding predominance “despite the existence of minor factual differences between individual class members,” where the case involved “alleged policies that required class members to work without compensation, meal and rest periods, and/or reimbursement for expenses”); *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 527 F. Supp. 2d 1053, 1065–68 (N.D. Cal. 2007) (“Plaintiffs have submitted evidence of [] uniform policies . . . such as training, recruiting and job descriptions. Accordingly, plaintiffs have made a strong showing that, as a general matter, common questions . . . predominate over individual variations.”). As such, the Court concludes that common questions of law and fact similarly predominate here.

As for superiority, requiring more than 2,300 Class Members to litigate their claims separately would be inefficient and costly, resulting in duplicative and potentially conflicting proceedings. *See Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978) (“Numerous individual actions would be expensive and time-consuming and would create the danger of conflicting decisions as to persons similarly situated.”). Class Members could face difficulty finding legal representation and could lose the incentive to bring their claims if forced to do so in isolation. *See In re Napster, Inc. Copyright Litig.*, No. C 04-1671 MHP, 2005 WL 1287611, at *8 (N.D. Cal. June 1, 2005) (finding superiority in part because “many small composers individually lack the time, resources, and legal sophistication to enforce their copyrights”). A class action would thus be the superior method for adjudicating this action.

In short, the Court concludes that both the predominance and superiority requirements of Rule 23(b)(3) are satisfied.

C. Conclusion

Plaintiffs have met the requirements for class certification under Rule 23. Therefore, the Court **CERTIFIES** the Class for settlement purposes only. The Court also **APPOINTS** Blumenthal Nordrehaug Bhomik De Blouw LLP and The Spivak Law Firm as Class Counsel and **APPOINTS** Plaintiffs Ayala and Aviles as Class Representatives.

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III. Preliminary Approval of the Proposed Class Action Settlement

The next step is to determine whether the settlement reached is “fair, reasonable, and adequate” under Rule 23(e). *See* Fed. R. Civ. P. 23(e)(2).

A. Legal Standard

The approval of a class action settlement is a two-step process under Rule 23(e) in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted. *See In re Am. Apparel, Inc. S’holder Litig.*, No. CV 10-6352 MMM (CGx), 2014 WL 10212865, at *5 (C.D. Cal. July 28, 2014). “At the preliminary approval stage, a court determines whether a proposed settlement is within the range of possible approval and whether or not notice should be sent to class members.” *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1063 (C.D. Cal. 2010) (internal quotation marks omitted). Preliminary approval amounts to a finding that the terms of the proposed settlement warrant consideration by members of the class and a full examination at a final approval hearing. *See Manual for Complex Litigation* (Fourth) § 13.14 (2004).

Preliminary approval is appropriate if “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *Ma v. Covidien Holding, Inc.*, No. SACV 12-2161 DOC, 2014 WL 360196, at *4 (C.D. Cal. Jan. 31, 2014); *see also Eddings v. Health Net, Inc.*, No. CV 10-1744 JST (RZx), 2013 WL 169895, at *2 (C.D. Cal. Jan. 16, 2013).

After notice is given to the class, preliminary approval is followed by a review of the fairness of the settlement at a final fairness hearing, and, if appropriate, a finding that it is “fair, reasonable, and adequate.” Fed R. Civ. P. 23(e)(2); *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012); *Hanlon*, 150 F.3d at 1027. In making this determination, the district court must balance many factors:

the strength of the plaintiffs’ case; the risk, expense complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience

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and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Hanlon, 150 F.3d at 1026; *see also Staton*, 327 F.3d at 959; *Officers for Just. v. Civ. Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982) (noting that the list of factors is “by no means an exhaustive list”).

The district court must approve or reject the settlement as a whole. *See Hanlon*, 150 F.3d at 1026 (“It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness.”). The Court may not delete, modify, or rewrite particular provisions of the settlement. *See Dennis v. Kellogg Co.*, 697 F.3d 858, 868 (9th Cir. 2012); *Hanlon*, 150 F.3d at 1026.

Where the parties negotiate a settlement agreement before the class has been certified, “settlement approval ‘requires a higher standard of fairness’ and ‘a more probing inquiry than may normally be required under Rule 23(e).’” *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048–49 (9th Cir. 2019) (quoting *Dennis*, 697 F.3d at 864). Specifically, “such [settlement] agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court’s approval as fair,” and this “more exacting review is warranted to ensure that class representatives and their counsel do not secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel had a duty to represent.” *Id.* (internal quotations omitted). Courts must especially scrutinize “subtle signs of collusion,” such as a reversionary clause, a clear sailing agreement, or a disproportionately large attorneys’ fees award. *Id.*

B. Overview of the Settlement Agreement

Defendant agreed to pay the Class \$1,800,000.00 (the “Gross Settlement Amount” or “Gross Settlement Fund”), inclusive of interest, settlement administration fees, payroll taxes, class representative service awards, attorneys’ fees, and PAGA civil penalties. *Settlement* ¶ 4. The remainder of the Gross Settlement Fund after these deductions (the “Net Settlement Fund”) shall be paid to Class Members as their Individual Settlement Award, *id.* ¶ 5(A)–(B), which will be approximately \$400 per class member before taxes (assuming all class members worked the same number of workweeks), *see id.* ¶ 4. There is no reversion of any portion of the Gross Settlement Fund to Defendant. *See id.* ¶ 5(G).

Each Class Member shall be entitled to a pro rata portion of the Net Settlement Fund based on the number of workweeks employed during the Class Period as a fraction of the total workweeks worked by all Class Members. *Id.* ¶ 5(B). Checks must be cashed within 180

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calendar days from the date of mailing. *Id.* ¶ 5(G). Any settlement checks not claimed within 180 days after distribution shall escheat to the State of California Controller’s Office to be held in the name of the Class Member who is the payee of the check. *Id.*

The Settlement Administrator will distribute 75% of the PAGA civil penalties to the California Labor and Workforce Development Agency (“LWDA”). *Id.* ¶ 5(C). The PAGA Settlement Class Members will receive a pro rata share of the remaining 25% based on the number of workweeks employed during the PAGA Class Period as a fraction of the total workweeks worked by all PAGA Class Members. *Id.* As with the greater Settlement Class, checks must also be cashed within 180 days of issuance, and any checks not claimed within 180 days will escheat to the State of California Controller’s Office to be held in the name of the PAGA Class Member who is the payee of the check. *See id.* ¶ 5(G).

Defendant has also agreed to change its policies to begin compensating non-exempt hourly employees for time spent undergoing security checks at its California facilities, which includes installing time capturing systems at its security checkpoints. *Id.* ¶ 2. Plaintiffs note that these measures “fairly and adequately address the primary concerns that caused them to bring the Lawsuit.” *Id.* Plaintiffs agreed not to sue Defendant regarding this practice so long as these remedial measures remain in place. *Id.*

In return, Class Members who do not opt-out will release Defendant and its enumerated agents and shareholders from all the following claims plead in the Consolidated Class Action Complaint arising between December 12, 2015 and September 1, 2021:

- (a) failure to provide meal and rest periods;
- (b) failure to indemnify expenses;
- (c) failure to pay all wages at the correct rates of pay;
- (d) failure to provide proper wage statements;
- (e) waiting time penalties;
- and (f) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above.

Id. ¶ 3(A).

Similarly, the PAGA Class Members who do not opt-out will release all claims under PAGA alleged in the “Consolidated Class Action Complaint and/or any notice submitted by Plaintiffs to the LWDA, to the extent that such claims were or could have been pled or could arise out of the facts pled” between December 15, 2015 and September 1, 2021, including:

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(a) failure to provide meal and rest periods; (b) failure to indemnify expenses; (c) failure to pay all wages at the correct rates of pay; (d) failure to provide proper wage statements; and (e) waiting time penalties.

Id. ¶ 3(B).

C. Analysis of Settlement Agreement

i. *Fair and Honest Negotiations*

In general, evidence that a settlement agreement is arrived at through genuine arms-length bargaining with a mediator supports a conclusion that the settlement is fair. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution.”); *Sarabi v. Weltman, Weinberg & Reis Co., L.P.A.*, No. CV 10-1777 AJB (NLSx), 2012 WL 3809123, at *1 (S.D. Cal. Sept. 4, 2012) (holding that a settlement should be granted preliminary approval after the parties engaged in extensive negotiations); *Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG (CWx), 2014 WL 4090564, at *10 (C.D. Cal. Apr. 29, 2014) (declining to apply a presumption but considering the arms-length nature of the negotiations as evidence of reasonableness).

Here, the evidence supports the conclusion that the Settlement is fair and honest. The parties actively litigated this case prior to mediation, including engaging in written discovery, taking depositions, filing discovery motions, and exchanging relevant information and documentation. *Nordrehaug Decl.* ¶¶ 15–16; *Spivak Decl.* ¶ 10; *see also* Dkts. # 43–55. Further, Plaintiffs filed, and Defendant opposed, a motion for class certification prior to reaching settlement. *See generally* Dkts. # 56, 73. This suggests that the parties have a clear view of the strengths and weaknesses of their positions in the case.

The parties reached the Settlement after engaging in two adversarial and arms’ length mediation sessions conducted first by Ms. Lisa Klerman and then by Mr. Lou Marlin. *Nordrehaug Decl.* ¶ 17; *Spivak Decl.* ¶¶ 8, 10. The negotiations at mediation were adversarial and, although the parties reached an agreement in principle based on Mr. Marlin’s proposal, they spent the next several months drafting and negotiating the full Settlement. *Nordrehaug Decl.* ¶ 17.

The time and effort spent on discovery, two mediation sessions, and the fact that the Settlement was premised on a mediator’s proposal weigh in favor of preliminary approval of the Settlement, as they suggest that there was no collusion. *See Hanlon*, 150 F.3d at 1029. Nothing

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indicates that the negotiations were dishonest or collusive in any way, and the discovery conducted and the filing of an opposed motion to certify the class suggests that the parties were well informed and had sufficient information to assess the merits of their claims. *See Glass v. UBS Fin. Servs., Inc.*, No. CV 06-4068 MMC, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007) (reasoning that the parties’ having undertaken informal discovery prior to settling supports approving the class action settlement). The Court is therefore satisfied that the Settlement is the product of fair and honest negotiations.

ii. *Settlement Amount*

To evaluate whether a settlement falls within the range of possible approval, “courts primarily consider plaintiffs’ expected recovery balanced against the value of the settlement offer.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

Here, Plaintiffs estimate that Defendant’s *maximum* exposure was approximately \$23.13 million for off-the-clock work, meal period violations, rest break violations, wage statement penalties, waiting time penalties, and expense reimbursement. *Mot.* 11:8–18; *Nordrehaug Decl.* ¶ 20; *Spivak Decl.* ¶ 22. This amount is likely unreliable, as Plaintiffs concede that these are “‘home run’ projections and do not factor in any of the risks involved.” *Spivak Decl.* ¶ 22. The PAGA penalty estimation was approximately \$7 million, but Plaintiffs note that the penalties could “potentially have zero value” to the extent they were based on meal and rest break claims. *See Mot.* 11:18–22. Moreover, according to Plaintiffs, Defendant’s numerous defenses to Plaintiffs’ key waiting time and cell phone expense claims presented “significant uncertainty.” *Id.* 12:10–14:9. And Plaintiffs acknowledge that this Court’s own decision to deny a class certification motion in *Coates v. United Parcel Service, Inc.*, No. CV 18-3012 PSG (AFMx), 2019 WL 8884492, at *7–8 (C.D. Cal. July 2, 2019) significantly weakened their case because the decision was premised on substantially the same facts. *Id.* 14:2–9.

Therefore, considering the significant obstacles Plaintiffs faced and the potential for the PAGA claims to have little or no value, the Gross Settlement amount of \$1,800,000.00 appears reasonable even though it is less than 10% of Plaintiffs’ admittedly high estimated damages. *See Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (upholding settlement as “fair and reasonable” where the settlement amount was approximately only 10% of the class’s own estimates). Moreover, the Settlement confers a benefit on Class Members who would face significant risk of no recovery and ongoing expenses if forced to proceed with litigation. *See Nordrehaug Decl.* ¶22. Given that “the risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement” is a relevant factor, *Vasquez v. Coast Valley*

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Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010) (citing *In re Mego*, 213 F.3d at 458), this reality favors preliminary approval.

In short, given the ongoing risks of litigation and the relative value of the Class’s recovery, the Court concludes that the settlement amount is within the range of approval.

iii. *Attorneys’ Fees and Costs*

When approving attorneys’ fees in common fund cases, courts in the Ninth Circuit have discretion to apply the percentage-of-the-fund method or the lodestar method to determine reasonable attorneys’ fees. *See Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944–45 (9th Cir. 2011) (finding that when a settlement establishes a common fund for the benefit of a class, courts may use either method to gauge the reasonableness of a fee request, but encouraging courts to employ a second method as a cross-check after choosing a primary method).

If employing the percentage-of-the-fund method, the “starting point” or “benchmark” award is 25% of the total settlement value. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). A court may exceed the benchmark but must explain its reasons for so doing. *See Powers*, 229 F.3d at 1255–57.

Calculation of the lodestar, which measures the lawyers’ investment of time in the litigation, provides a check on the reasonableness of the percentage award. *Vizcaino*, 290 F.3d at 1050. To determine attorneys’ fees under the lodestar method, a court must multiply the reasonable hours expended by a reasonable hourly rate. *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1294 n.2 (9th Cir. 1994). The court may then enhance the lodestar with a “multiplier,” if necessary, to arrive at a reasonable fee. *Id.*

Here, Class Counsel request an award of attorneys’ fees not to exceed one-third of the Gross Settlement Fund, or \$600,000, plus actual costs and expenses estimated at \$145,000. *Settlement* ¶ 6. Plaintiffs do not explicitly or clearly provide briefing using the lodestar or the *Vizcaino* factors to fully support this request. *See generally Mot.*

Because the amount Class Counsel requests is greater than the 25% “benchmark” established in this Court, the Court **ORDERS** Class Counsel to submit a brief justifying the upward departure from the benchmark under the *Vizcaino* factors in its motion. *See Vizcaino*, 290 F.3d at 1048–50 (examining (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of the work; (4) the contingent nature of the fee and the financial burden

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carried by plaintiffs; and (5) awards made in similar cases). Class Counsel is further instructed to provide the requested hourly rate and hours expended in this case so that the Court can calculate the lodestar value and use it to cross-check the reasonableness of the fees and costs award. In its motion, Class Counsel should explain whether a multiplier should be applied and, if so, why the proposed multiplier is appropriate in this case. Finally, Class Counsel must submit a detailed summary of its costs and expenses for the Court's consideration.

iv. Enhancement Awards

“Incentive awards are fairly typical in class action cases.” *Rodriguez*, 563 F.3d at 958. When considering requests for incentive awards, courts consider five principal factors:

(1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; [and] (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

See Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995). Further, courts also typically examine the propriety of an incentive award by comparing it to the total amount other class members will receive. *See Staton*, 327 F.3d at 975.

Here, each Class Representative seeks an enhancement award of \$20,000 in addition to his individual settlement payment. *Settlement* ¶ 7. The amount they seek is equal to 2.23% of the Gross Settlement or 1.12% each. This proportion places the requested enhancement awards toward the high end of approved awards. *See, e.g., Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. CV 13-5693 PSG (GJSx), 2017 WL 4685536, at *11 (C.D. Cal. May 8, 2017) (approving \$25,000 incentive award, in part, because the award reflected 0.2% of the total settlement).

Further, the award is significantly disproportionate to the net recovery of other Class Members. The average individual share of the Net Settlement is approximately \$400 per Class Member (before payroll taxes and assuming each class member worked the same number of workweeks). *See Settlement* ¶ 4. This means that each named Plaintiffs' incentive award is almost 50 times greater than the average recovery and appears facially unreasonable. *See Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 335 (N.D. Cal. 2014) (“To determine the reasonableness of an incentive payment, courts consider the proportionality between the

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incentive payment and the range of class members' settlement awards."'). Plaintiffs note that they plan to justify these awards in their final approval papers. *Nordrehaug Decl.* ¶ 30.

Ultimately, the Court will determine the reasonableness of the requested enhancement awards when ruling on Plaintiffs' motion for final approval. Before the final approval hearing, the Court **ORDERS** Plaintiffs to submit a memorandum further justifying their award as a percentage of the total settlement, as well as the great disparity between the proposed award and the average settlement amount for each Class Member.

v. *Administration Costs*

The Settlement provides that the parties will pay Phoenix Settlement Administration ("Phoenix") up to \$30,000 to administer the Settlement. *Settlement* ¶ 4(C)(2). This request is reasonable considering the estimated Class size of 2,392 individuals. *See Holt v. Parsec, Inc.*, No. CV 10-9540-DMG (PJWx), 2012 WL 12882712, at *1–3 (C.D. Cal. Mar. 5, 2012) (approving an estimated \$30,000 in administration fees for approximately 1,800 class members); *Ching v. Siemens Indus.*, No. 11-cv-04838-MEJ, 2014 WL 2926210, at *2 (N.D. Cal. June 27, 2014) (approving an estimated \$15,000 claims administrator fee for sixty-eight claims).

vi. *PAGA Penalties*

The parties have agreed to a PAGA penalty of \$40,000. *Settlement* ¶ 4(C)(6). Seventy-five percent (\$30,000) will go to the LWDA and twenty-five percent (\$10,000) will go to the PAGA Settlement Class Members based on their pro rata share of the number of workweeks employed during the PAGA Class Period as a fraction of the total workweeks worked by all PAGA Class Members. *See id.* ¶ 5(C); Cal. Lab. Code § 2699(i) (providing that 75% of civil penalties recovered by aggrieved employees should be distributed to the LWDA). This PAGA allocation represents 2.2% of the \$1,800,000.00 gross settlement amount, which is only slightly higher than PAGA claims typically approved by courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMax), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2%). However, the fact that it is slightly higher than two percent does not raise concerns that Plaintiffs are skirting the "special responsibility to [their] fellow aggrieved workers" or using the PAGA claim "merely as a bargaining chip, wherein the rights of individuals . . . may be waived for little additional consideration in order to induce the employer to agree to a settlement." *See O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016). Accordingly, the Court finds that the settlement of the claims for penalties under PAGA is reasonable.

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vii. *Remaining Funds*

The Settlement provides that, 180 days after distribution, any settlement checks not claimed shall escheat to the State of California Controller’s Office to be held in the name of the Class Member who is the payee of the check. *Settlement* ¶ 5(G). Courts in this district have approved class action settlements that deal with remaining funds in this manner. *See, e.g., Sequeira Ruiz v. JCP Logistics, Inc.*, No. SACV131908JLSANX, 2016 WL 6156211, at *1 (C.D. Cal. Mar. 10, 2016); *Krumbine v. Schneider Nat’l Carriers, Inc.*, No. 10CV4565GHKJEMX, 2013 WL 12209908, at *1 (C.D. Cal. Aug. 6, 2013); *Rooker v. Gen. Mills Operations, LLC*, No. CV 17-467 PA (PLAX), 2018 WL 4962089, at *1 (C.D. Cal. Mar. 26, 2018). Accordingly, the Court is satisfied with the parties’ proposal for dealing with any remaining funds.

D. Notice to Class Members

Before the final approval hearing, the Court requires adequate notice of the settlement be given to all class members. Federal Rule of Civil Procedure 23 provides:

For any class certified under Rule 23(b)(3) . . . the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. . . . The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). “Notice is satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.’” *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)).

Here, Plaintiffs have provided a proposed Notice of Class Action Settlement. *See Settlement*, Ex. A (“*Notice*”). It sets forth in clear language: (1) the nature of the action and the

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essential terms of the Settlement; (2) the meaning and nature of the Class; (3) Class Counsel’s application for attorneys’ fees and the proposed service award payments for Plaintiffs; (4) the formula for calculation and distribution of the Net Settlement Amount; (5) how to opt out of the Settlement; (6) how to object to the Settlement; (7) the Court’s procedure for final approval of the Settlement; and (8) how to obtain additional information regarding this case and the Settlement. *See generally id.*

Plaintiffs propose that:

[w]ithin thirty (30) calendar days after entry of an order preliminary approving this Settlement, Defendant will provide the Settlement Administrator with the names, last known addresses, telephone numbers, social security numbers, and dates of termination of employment (if any), and the number of workweeks worked by each Settlement Class Member while employed during the Class Period and PAGA Settlement Period (the “Class Data”).

Settlement ¶ 10(A). Within ten days after receipt of the Class Data, the Settlement Administrator will mail Class Notices to each Class Member whose address information is known. *Id.* ¶ 10(B). Prior to this mailing, the Settlement Administrator will conduct a National Change of Address check as to each address. *Id.*

Any Class Notices returned to the Settlement Administrator as non-deliverable will be sent to a forwarding address. *Id.* ¶ 10(F). If no forwarding address is provided, the Settlement Administrator will make “reasonable efforts, including utilizing a ‘skip trace,’ to obtain an updated mailing address.” *Id.* If an address is found, the Settlement Administrator will immediately, or no later than three days after discovering the address, send the Notice Packet to that address. *Id.* If the Notice Packet is again returned as undeliverable, no further action is required. *Id.* Any Class Member who wishes to opt-out or object to the Settlement must do so within 45 calendar days of the date of the mailing. *Id.* 10(C).

Having reviewed the plan to notify Class Members laid out in the Settlement, as well as the Notice of Class Action Settlement, the Court finds them satisfactory.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiffs’ motion for preliminary approval of class action settlement. The Court **PRELIMINARILY APPROVES** the Settlement, **APPOINTS** Plaintiffs Ayala and Aviles as Class Representatives, **APPOINTS**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 20-117 PSG (AFMx)	Date	August 24, 2021
Title	Eric Ayala v. UPS Supply Chain Solutions, Inc. et al		

Blumenthal Nordrehaug Bhowmik De Blouw LLP and The Spivak Law Firm as Class Counsel, **APPOINTS** Phoenix Settlement Administration as the Settlement Administrator, and **APPROVES** the proposed Class Notice Form. The final approval hearing is set for **January 14, 2022**.

At least thirty days before the final approval hearing, and in addition to the motion for final approval of class action settlement, the Court **ORDERS** Plaintiffs to file:

- A memorandum justifying Class Counsels' award of attorneys' fees and costs that includes declarations supporting the reasonableness of each attorney's requested hourly rate, itemized billing statements showing hours worked, hourly rates, expenses incurred thus far, and expenses to be incurred in the future. The memorandum should explain in detail why an upward departure from the benchmark percentage rate is warranted. The memo should also explain whether a multiplier should be applied to the lodestar value for the attorneys' fees and, if so, why the proposed multiplier is appropriate in this case; and
- A memorandum justifying Plaintiffs' enhancement awards with respect to the Gross Settlement Amount and the Individual Settlement Payments to Class Members, as well as declarations from Plaintiffs supporting an award.

IT IS SO ORDERED.

EXHIBIT C

• Non-appearance final report ^{#6448}: June 5, 2015 @ 8:30am
- Submit report before & have it reference non-appearance date

TUCKER v. MALY'S WEST, INC.

• Declaration & order by Friday.

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date of Hearing: August 5, 2014

Department: 308

Case No.: BC483920

TENTATIVE RULING: Contingent upon submission of the omitted cost bill of the LAW OFFICES OF SHAUN SETAREH, the tentative ruling is as follows:

- (1) The Court certifies the class for purposes of settlement;
- (2) The Court finds the settlement is fair, adequate, and reasonable;
- (3) The Court awards:
 - a. Class counsel \$133,333.33 for attorney fees and \$11,185.76 for costs;
 - b. The named Plaintiff \$10,000 for an incentive payment;
 - c. CPT Group, Inc. \$9,500 for claims administration costs;
- (4) The Court orders Class Counsel to do the following:
 - a. file a proposed Order and Judgment, consistent with this ruling, by August 12, 2014; and
 - b. provide notice to the class members pursuant to California Rules of Court, rule 3.771(b).
- (5) The Court will set a non-appearance final report date on the date of the hearing.

FINAL APPROVAL OF CLASS ACTION SETTLEMENT

California Rules of Court, rule 3.769(g), provides for an inquiry into the fairness of the proposed settlement prior to the final approval hearing. After this, the court must make and enter judgment, including a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. See California Rules of Court, rule 3.769(h). The class action may not be dismissed once judgment is entered. See California Rules of Court, rule 3.770. All class settlements are subject to a settlement hearing and court approval before entry of judgment or final order.

The trial court has broad powers to determine whether a proposed settlement is fair. Mallick v. Superior Court (1979) 89 Cal. App. 3d 434, 438. The California standard for approval of class settlements is similar to the federal requirement that the settlement be fair, reasonable, and adequate for class members overall. Dunk v. Ford Motor Co. (1996) 48 Cal. App. 4th 1794, 1801.

CLASS NOTICE AND CLASS RESPONSE

On 4/23/14, the claims administrator mailed notice packets (consisting of the notice, Claim Form – Instructions, Claim Form, and business reply envelope) via first class U.S. mail to all 230 class members. See Shirinian Declaration, ¶7 and Exhibits A to D. On 5/23/14, the claims administrator also mailed reminder postcards to 124 class members who had not yet

responded as of that date. Id., ¶8 and Exhibit E. As of 7/11/14, no notice packets have been deemed undeliverable. Id., ¶11. As of 7/11/14, the claims administrator has received 4 requests for exclusion and no objections. Id., ¶12 and 17. As of 7/11/14, the claims administrator has received 170 claim forms. Id., ¶18.

Under the terms of the settlement agreement, each claimant will receive a settlement award based on his/her number of workweeks and any unclaimed amount will be distributed pro rata to the claimants. See Amended Settlement Agreement, §IX.B.1.a. According to the claims administrator's calculations, 100% of the net settlement amount of approximately **\$228,416.67**¹ will be distributed to the 170 claimants. See Shirinian Declaration, ¶20. Each claimant will receive an average settlement share of approximately **\$1,343.63** ($\$228,416.67 \div 170$). Id. The lowest settlement share is estimated to be \$39.15 and the highest settlement share is estimated to be \$2,094.26. Id.

EVALUATION OF THE SETTLEMENT

The Court must determine if the settlement is fair, adequate, and reasonable. The settlement is entitled to a presumption of fairness where: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." See Dunk v. Ford Motor Company (1996) 48 Cal.App.4th 1794, 1802.

The Court finds that the settlement is fair, adequate, and reasonable based on the following:

First, the settlement was reached through arm's-length bargaining. The settlement agreement is the product of a mediation with Mark Rudy on 3/20/13. See Setareh Declaration Re: Preliminary Approval, ¶¶6-7.

Second, class counsel conducted sufficient investigation and discovery to allow intelligent assessment of the claims against Defendant as well as the proposed settlement. Prior to settlement, class counsel, *inter alia*: obtained and reviewed Defendant's policies re: automobile allowances and expense reimbursements; obtained data from Defendant re: the number of class members, their lengths of employment, and amounts paid for automobile allowances; interviewed the named Plaintiff and putative class members; and had Kirk Marangi, a forensic economist, prepare a damages model. Id., ¶6.

Third, class counsel is experienced in class actions, including wage and hour class actions. Id., ¶¶11-13; see also Spivak Declaration Re: Preliminary Approval, ¶¶10, 14; Benowitz Declaration Re: Preliminary Approval, ¶¶5-8.

¹ This figure appears to be based on the following calculation: \$400,000 (gross settlement amount) minus \$133,333.33 (maximum attorney fees), \$15,000 (maximum attorney costs), \$9,500 (maximum claims administration costs), \$10,000 (maximum enhancement award), \$3,750 (PAGA penalties payable to LWDA).

Lastly, the settlement appears to have been positively received by the class members. As indicated above, out of 230 class members, **170 (73.91%)** submitted claims, **4 (1.74%)** opted out, and **none (0%)** objected.

Here, the moving papers, declarations and exhibits attached thereto, have provided this Court with “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise” such that this Court is satisfied “that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 408; see also Dunk v. Ford Motor Company (1996) 48 Cal.App.4th 1794, 1802 (“So long as the record is adequate to reach ‘an intelligent and objective opinion of the probabilities of success should the claim be litigated’ and ‘form’ an educated estimate of the complexity, expense and likely duration of such litigation...it is sufficient.”).

ATTORNEY COSTS AND FEES

The lodestar is the primary method of establishing the amount of reasonable attorney fees in California. See Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 556-558. This amount may be cross-checked against the percentage-of-recovery. Id. See also Cundiff v. Verizon California, Inc. (2008) 167 Cal.App.4th 718, 724, fn. 3 (“Under this method, the trial court first determines a touchstone or lodestar figure based on the “time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case.” (Serrano III, supra, 20 Cal.3d at p. 48.) The lodestar calculation is as follows:

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
LAW OFFICES OF SHAUN SETAREH ²	57.70	\$650	\$37,505.00
THE SPIVAK LAW FIRM ³	9.50	\$650	\$ 6,391.67
LAW OFFICES OF LOUIS BENOWITZ ⁴	65.20	\$420	\$27,384.00
TOTAL	132.40		\$71,280.67

Based on a review of class counsel’s billing records, 132.40 hours of attorney time appear to be reasonable for the tasks performed in this 2-year-old+ case. The hourly rates charged also appear to be reasonable and in line with prevailing rates in the community. See Setareh Declaration Re: Final Approval, ¶¶19-25 and Exhibits 15-20; Spivak Declaration Re: Final Approval, ¶16; Benowitz Declaration Re: Final Approval, ¶10. Accordingly, class counsel’s actual attorney fees of \$71,280.67 can be deemed the lodestar.

² See Setareh Declaration Re: Final Approval, ¶¶17, 19, and Exhibit 13.

³ See Spivak Declaration Re: Final Approval, ¶16 and Exhibit 2. To be accurate, 9.50 hours at \$650/hour equals \$6,175, and not the \$6,391.67 listed on The Spivak Law Firm’s invoice.

⁴ See Benowitz Declaration Re: Final Approval, ¶10 and Exhibit 2.

The **\$133,333.33** fee request translates into a positive multiplier of **1.87**. See Setareh Declaration Re: Final Approval, ¶19. The lodestar may be adjusted based on factors such as “the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.” See Thayer v. Wells Fargo Bank, N.A. (2001) 92 Cal.App.4th 819, 833. Here, application of these factors justifies augmentation of the lodestar. This case appears to be of medium difficulty to litigate. The issues were not particularly novel or difficult in this wage and hour case. Nevertheless, class counsel, who is well-qualified to litigate wage and hour cases, obtained a \$400,000 non-reversionary gross settlement amount that pays claimants an average settlement share of \$1,343.63. Further, class counsel accepted this case on a contingency basis. See Motion for Final Approval, 9:27-28. As a result, class counsel has risked nonpayment of the costs advanced and attorney time worked. It should also be noted that the notice expressly disclosed the fee request,⁵ and not a single class member objected to the fee request (or to any other aspect of the settlement for that matter). Lastly, applying the cross-check, the fee request represents 33.33% of the gross settlement amount, which is the average percentage generally awarded in class actions. See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, FN13 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”). The fee request may therefore be awarded.

Class counsel requests costs in the total amount of **\$11,185.76**, or \$4,597.56 for the LAW OFFICES OF SHAUN SETAREH + \$6,529.89 for THE SPIVAK LAW FIRM + \$58.31 for the LAW OFFICES OF LOUIS BENO WITZ. See Setareh Declaration Re: Final Approval, ¶15 (citing to Exhibit 12);⁶ Spivak Declaration Re: Final Approval, ¶15 and Exhibit 1; Benowitz Declaration Re: Final Approval, ¶9 and Exhibit 1. The costs (except for the LAW OFFICES OF SHAUN SETAREH’s costs, which are subject to review), appear to be reasonable and necessary to the litigation. As with the fee request, the maximum cost request was likewise disclosed to class members and ultimately deemed unobjectionable. The cost request, contingent upon submission of the omitted cost bill of the LAW OFFICES OF SHAUN SETAREH, may therefore be awarded.

CLASS REPRESENTATIVE INCENTIVE PAYMENT

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. See Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806-807; see also Cellphone Termination Cases (2010) 186 Cal.App.4th 1380, 1394-1395 (“[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]”) Here, the sole

⁵ See Notice, ¶12.

⁶ Although there is a tab for Exhibit 12, no such exhibit is included with either the original or conformed copies.

class representative, Tracey Christine Tucker, seeks an incentive payment of \$10,000. In connection with the motion for preliminary approval, Ms. Tucker submitted a declaration regarding her contributions to this case. Specifically, she states that she has spent approximately “more than 110 hours of [her] time in connection with this case [as of 2/24/14].” See Tucker Declaration (attached to Setareh Declaration Re: Final Approval as Exhibit 7), ¶19. She performed tasks such as: retaining class counsel; providing information for use in this case; assisting class counsel contact class members; preparing for and participating in the full-day mediation; participating in the settlement process; and reviewing documents (including the settlement agreement), *Id.* Ms. Tucker also points out that she has assumed risks of being blackballed by prospective employers and being liable for Defendant’s costs had Defendant prevailed at trial. *Id.*, ¶10. In light of the foregoing, as well as Ms. Tucker’s execution of a general release and the benefits obtained, \$10,000 appears to be a reasonable inducement for Ms. Tucker’s participation in this case.

CLAIMS ADMINISTRATION COSTS

The claims administrator requests the settlement cap of \$9,500 for “all costs incurred to date, as well as the estimated costs involved in completing the settlement.” See Shirinian Declaration, ¶21. Based on the class size and the claims administrator’s duties under the settlement agreement, the amount of claims administration costs requested appears to be reasonable.

EXHIBIT D

1 G. Arthur Meneses (SBN 105260)
Raul Perez (SBN 174687)
2 Gene Williams (SBN 211390)
Melissa Grant (SBN 205633)
3 Initiative Legal Group APC
1800 Century Park East, 2nd Floor
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Telephone: (310) 556-5637
5 Facsimile: (310) 861-9051

6 Attorneys for Plaintiff Robert Acheson
and the Settlement Class
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10

11 ROBERT ACHESON, individually, and on
behalf of other members of the general
12 public similarly situated,

13 Plaintiff,

14 v.

15 EXPRESS, LLC, a Delaware limited
liability company; and DOES 1 through 10,
16 inclusive,

17 Defendant.
18

Case No.: 109CV135335

Assigned for all purposes to
the Hon. James P. Kleinberg

CLASS ACTION

**DECLARATION OF G. ARTHUR
MENESES IN SUPPORT OF MOTION
FOR A CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT AND AN
AWARD OF ATTORNEYS' FEES AND
COSTS**

Date: September 9, 2011

Time: 9:00 a.m.

Place: Department 1

Complaint Filed: February 19, 2009

Trial Date: Trial Date Not Set
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DECLARATION OF G. ARTHUR MENESES

I, G. Arthur Meneses, hereby declare as follows:

1. I am an attorney licensed to practice before all courts of the State of California. I state the following upon information and belief and if called as a witness, I could and would competently testify. I am a Partner at Initiative Legal Group APC (“Initiative” or “Class Counsel”), Class Counsel in this action and counsel for Plaintiff and Class Representative Robert Acheson. I make this declaration in support of the Motion for a Class Representative Enhancement Payment and an Award of Attorneys’ Fees and Costs.

Initiative’s Founding and Background

2. Founded in 2002, Initiative prosecutes class actions and other complex litigation on behalf of consumers, employees, and others who have had their rights violated. Drawing on the expertise and experience of over 40 attorneys, Initiative operates one of the largest wage and hour class action practices in California devoted exclusively to representing plaintiffs unable to afford attorneys’ fees and costs.

Initiative’s Certification of Class Actions and Appointments as Interim Lead Counsel

3. Since 2005, Initiative has successfully certified 20 class actions by way of *contested* motions and has been appointed Interim Lead Counsel in a number of other cases. In *Nevins v. UHS of Delaware* (L.A. Super. Ct. No. BC322077), Initiative certified a class of more than 1500 nurses and other healthcare employees alleging unpaid overtime and waiting-time penalties. In *Smith v. The Children’s Place* (L.A. Super. Ct. No. BC328780), Initiative’s motion for class certification as to the class members’ claims for unpaid overtime, waiting-time penalties, and uncompensated meal breaks and rest periods was granted. In *Padovani v. Citicorp Investment Services, Inc.* (C.D. Cal. No. 07-00113), Initiative was appointed lead counsel of the actions brought against Citicorp for the company’s alleged failure to properly classify employees as non-exempt and to pay them overtime. In *Palos v. Int’l Protective Servs., Inc.* (L.A. Super. Ct. No. BC323209), Initiative certified a class of thousands of security guards for claims arising under California Labor Code section 223 (covertly paying lower-than-required wages) and California Business and Professions Code section 17200. In

1 *Taylor v. Ross Stores, Inc.* (San Bernardino Super. Ct. No. RCV 065453, JCCP 4331), a case
2 initially pending and certified in Orange County before being consolidated with two related
3 cases in San Bernardino County, Initiative successfully certified a class of assistant managers
4 misclassified as exempt from overtime pay, who consequently did not receive overtime pay,
5 meal or rest periods, and also had unlawful deductions taken from their earned bonuses. As
6 lead counsel, Initiative negotiated the court-approved settlement of the consolidated cases. In
7 *Deleon v. Verizon Wireless LLC* (L.A. Super. Ct. No. 389065), Initiative was appointed co-
8 lead counsel of the coordinated cases brought against Defendant for its alleged failure to
9 provide employees with Labor Code compliant meal and rest periods and to pay the requisite
10 premiums as a consequence of that failure. In *Mansfield v. Brackenhoff Mgmt. Group, Inc.*
11 (L.A. Super. Ct. No. BC356188), Initiative’s certification motion was granted on behalf of
12 property managers alleging overtime, meal and rest period violations, and the failure to timely
13 pay wages upon termination. In *Clymer v. Candle Acquisition Co.* (L.A. Super. Ct.
14 BC328765), after a successful appeal, Initiative’s certification motion was granted as to wage
15 statement violations under California Labor Code section 226 and California Business and
16 Professions Code section 17200. In *Lopez v. Discount Tire Centers* (L.A. Super. Ct. No.
17 BC399137), Initiative was appointed lead counsel of the coordinated cases against Discount
18 Tire Centers which alleged that the company failed to provide employees with Labor Code
19 compliant meal and rest periods and to pay the requisite premiums as a consequence of that
20 failure. In *Moreno, et al. v. AutoZone, Inc.* (N.D. Cal. No. 05-04432), Initiative certified a
21 class of over 24,600 employees based on a claim that former employees failed to receive their
22 final paychecks within the time governed by California Labor Code sections 201 and 202. In
23 *Morgan v. United Retail Group, Inc.* (L.A. Super. Ct. No. BC362191), Initiative certified a
24 class of more than 2700 current and former retail employees who received non-compliant
25 wage statements. In *In re Taco Bell Wage and Hour Actions* (E.D. Ca. No. 07-01314),
26 Initiative was appointed interim lead counsel of the actions brought against Taco Bell on
27 behalf of a putative class of 17,000 current and former non-exempt employees on the grounds
28 that Taco Bell failed to comply with the California Labor Code. In *Parks v. Walt Disney*

1 *Internet Group* (C.D. Cal. No. 08-1380), the district court granted Initiative’s motion for
2 conditional class certification of a collective action under the Fair Labor Standards Act on
3 behalf of misclassified financial analysts. In *Hill v. Sullivan Auto Group* (L.A. Super. Ct. No.
4 BC378222), Initiative certified a class of current and former automobile salespersons alleging
5 wage statement violations under California Labor Code section 226 and California Business
6 and Professions Code section 17200. In *In Re Fidelity Overtime Litig.* (C.D. Cal. 06-07765),
7 Initiative was appointed interim lead counsel of the consolidated actions against Fidelity
8 which alleged that the company had improperly classified employees as exempt from certain
9 provisions of the California Labor Code and the Fair Labor Standards Act. In *Myart v.*
10 *AutoZone, Inc.* (Orange County Super. Ct. No. 05CC03219), Initiative certified a class of
11 approximately 30,000 retail store employees alleging unpaid off-the-clock work. In *Mazza v.*
12 *Am. Honda Motor Co., Inc.* (C.D. Cal. No. 07-07857), Initiative certified a nationwide class of
13 Acura owners alleging violations of California’s Unfair Competition Law and the Consumer
14 Legal Remedies Act in connection with allegations that Honda failed to disclose pre-purchase,
15 material information about a new braking system to the class members. In *Mares v. BFS*
16 *Retail & Commercial Operations, LLC* (L.A. Super. Ct. No. BC375967), Initiative certified a
17 class of approximately 3200 current and former technicians and front-shop employees, for the
18 miscalculation of the regular rate for purposes of paying class members premiums for missed
19 meal and rest breaks. In *In re AutoZone, Inc., Wage and Hour Employment Practices*
20 *Litigation* (N.D. Cal 3:10-md-02159-CRB), the District Court ordered coordinated discovery
21 and appointed Initiative as lead counsel for purposes of discovery. In *Augustus v. American*
22 *Commercial Sec. Servs., et al.* (L.A. Super. Ct. No. BC336416), Initiative, with co-counsel,
23 certified two subclasses of security guards for alleged meal and rest period violations. In
24 *Blair v. Jo-Ann Stores, Inc., et al.* (L.A. Super. Ct. No. BC394795), Initiative, with co-
25 counsel, certified a class for claims including misclassification, uncompensated meal breaks
26 and rest periods, and off-the-clock work on behalf of over 10,000 class members. In
27 *Iskanian v. CLS Transp. Los Angeles, LLC* (L.A. Super. Ct. No. BC356521), Initiative
28 certified a class for claims including unpaid overtime, as well as uncompensated meal and rest

1 periods. In *Delgado v. New Albertson’s Inc., et al.* (C.D. Cal. No. 07-07857), Initiative
2 certified a class of more than 42,000 current and former retail employees who received non-
3 compliant wage statements under the California Labor Code Private Attorneys General Act
4 (“PAGA”), codified at California Labor Code sections 2698, et seq. In *Zamora v. Balboa*
5 *Life & Casualty LLC, et al.* (L.A. Super Ct. No. BC360026), Initiative certified a class of
6 approximately 10,000 hourly-paid Countrywide employees across six subclasses. In
7 *Muhammad v. Bare Escentuals, Inc.* (L.A. Super. Ct. No. BC405569), Initiative certified a
8 class of 1700 current and former retail employees who received non-compliant wage
9 statements. In *Yousefian v. 21st Century Insurance Company, et al.* (C.D. Cal. No. 10-01077),
10 Initiative conditionally certified a collective action on behalf of current and former sales
11 representatives for claims arising under the Fair Labor Standards Act.

12 **Initiative’s Appellate Practice**

13 4. Initiative maintains an active appellate practice. Initiative successfully sought a
14 writ of mandamus in *Dunlap v. Super. Ct. (Bank of Am.)*, 142 Cal. App. 4th 330 (2006), which
15 took up whether a plaintiff must adhere to the administrative exhaustion requirement under
16 PAGA. *Dunlap* is one of a handful of published cases in this relatively new body of law.
17 Accordingly, *Dunlap* is frequently cited authority and will likely continue to be instrumental
18 as PAGA assumes its common law definition. In *The Children’s Place v. Super. Ct. (Smith)*
19 (Cal. 2d. Dist. Ct. No. B193391), Initiative persuaded the Court of Appeal to grant a
20 peremptory writ of mandate if the trial court did not restore an earlier ruling granting class
21 certification. The *Smith* writ petition assured the certification of a class alleging overtime and
22 wage statement violations and, soon thereafter, the case settled on terms favorable to the class.
23 In *Clymer v. Candle Acquisition Co.* (L.A. Super. Ct. No. BC328765), Initiative successfully
24 reversed on appeal a trial court order denying certification of a class alleging that non-
25 compliant wage statements give rise to a legal question intrinsically appropriate for class
26 certification. In *Iskanian v. CLS Transp. Los Angeles LLC* (L.A. Super. Ct. No. BC356521),
27 Initiative successfully sought a writ of mandate directing the trial court to reconsider its
28 decision compelling arbitration and dismissing the plaintiff’s class allegations on the basis of

1 an arbitration agreement that expressly disallowed the plaintiff’s enforcement of the
2 California Labor Code by way of class action. In *Coleman v. Estes Express Lines, Inc.*, 2011
3 U.S. App. LEXIS 1538 (9th Cir. January 25, 2011), Initiative successfully defended an appeal
4 of the District Court Order remanding the action to state court. The Ninth Circuit Court of
5 Appeals adopted Initiative’s reasoning that a District Court should limit its analysis to the
6 allegations contained in the complaint when determining whether it lacks subject matter
7 jurisdiction pursuant to the Local Controversy under the Class Action Fairness Act. Initiative
8 enjoyed another significant appellate success in *Aberdeen v. Toyota Motor Sales, U.S.A., Inc.*,
9 2011 U.S. App. LEXIS 5706 (9th Cir. March 18, 2011), where the Ninth Circuit held that the
10 District Court had erred in dismissing the case, and should retain jurisdiction over the matter
11 and allow individual claims to proceed. The Ninth Circuit also held that the District Court
12 erred in holding that Aberdeen lacked standing to sue under California’s Unfair Competition
13 Laws as an individual, and specifically left open the possibility that the case could proceed on
14 a class basis with a different class representative. And, in *Brown v. Ralphs Grocery Co.*, 197
15 Cal. App. 4th 489 (2011), Initiative succeeded in shielding its client’s Private Attorney
16 General Act (“PAGA”) claims from arbitration, obtaining a ruling that PAGA claims cannot
17 be waived by private agreement. Ralphs had argued that under *AT&T Mobility LLC v.*
18 *Concepcion*, 131 S. Ct. 1740 (2011), the Federal Arbitration Act (FAA) preempted state law
19 invalidating such arrangements. The Court of Appeal disagreed, finding that *Concepcion*
20 “does not provide that a public right, such as that created under the [PAGA], can be waived if
21 such a waiver is contrary to state law.”

22 **Initiative’s Record of Settlements on Behalf of Employees and Consumers**

23 5. Either on its own, or with co-counsel, Initiative has received final approval of
24 settlements totalling tens of millions of dollars on behalf of hundreds of thousands of class
25 members, including in the following cases: *In re Michelin North Am., Inc. Pax Sys.*
26 *Marketing & Sales Prac. Litig.* (No. 8:08-md-01911-RWT) (nationwide settlement on behalf
27 of approximately 94,000 class members who owned Honda vehicles with Michelin tires that
28 were, among other deficiencies, predisposed to premature tread wear); *Holliman v. Kaiser*

1 *Found. Health Plan, et al.* (Alameda Super. Ct. No. C06-0755 SC) (settlement on behalf of
2 healthcare workers for unpaid overtime and wage statement violations); *Dunlap v. Bank of*
3 *Am.* (L.A. Super. Ct. No. BC328934) (settlement on behalf of tellers, account representatives,
4 and other non-exempt employees for unpaid overtime and meal and rest break claims);
5 *Brannon v. Midland Credit Mgmt., Inc.* (San Diego Super. Ct. No. GIC 864722) (settlement
6 on behalf of class of misclassified account managers); *Taylor v. Ross Stores, Inc.* (San
7 Bernardino Super. Ct. No. RCV 065453, JCCP 4331) (settlement on behalf of certified class
8 of misclassified assistant store managers); *Case, et al. v. Toyohara America Inc.* (L.A. Super.
9 Ct. No. BC328111) (settlement of various wage and hours claims, including the failure to pay
10 overtime); *Guzman v. GAP* (L.A. Super. Ct. No. BC310168) (settlement on behalf of
11 misclassified store managers); *Sunio v. Marsh* (L.A. Super. Ct. No. BC328782) (settlement on
12 behalf of misclassified account representatives); *Kenemixay v. Nordstrom, Inc.* (L.A. Super.
13 Ct. No. BC318850) (settlement of claims for unpaid overtime and missed meal and rest
14 breaks); *Mavrogiorgos v. Rite Aid Corp.* (S.D. Cal. No. 05-0923) (settlement of wage
15 statement violations on behalf of non-exempt employees); *Meints v. Kohl's* (San Diego Super.
16 Ct. No. GIC 842807) (settlement of non-exempt employees' claims for missed/uncompensated
17 meal breaks and rest periods); *Jordan v. Enter. Car Rental* (L.A. Super. Ct. No. BC327390)
18 (settlement of unpaid overtime claims); *Gunter v. Fidelity Nat. Fin. Inc.* (C.D. Cal. No. 07-
19 4284) (settlement of second-generation misclassification-based overtime, meal break, and rest
20 period claims, as well as wage statement violations); *Smith v. The Children's Place* (L.A.
21 Super. Ct. No. BC328780) (settlement of unpaid regular rate for overtime, waiting time
22 penalties, and meal and rest break claims on behalf of retail store managers); *Mansfield v.*
23 *Brackenhoff Mgmt. Group, Inc.* (L.A. Super. Ct. No. BC356188) (settlement of
24 misclassification-based overtime, meal and rest break claims, and wage statement violations);
25 *Barrett v. The St. John Companies, Inc.* (L.A. Super. Ct. No. BC354278) (settlement of claims
26 for miscalculated regular rate for overtime, meal and rest break claims, and wage statement
27 violations on behalf of salespersons and warehouse workers); *Webster v. Sprint PCS, Inc.*
28 (C.D. Cal. No. 06-04623) (settlement of several wage and hour claims, including the failure to

1 provide accurate wage statements); *Simpson v. e*Trade* (C.D. Cal. No. 06-00156) (settlement
2 of wage and hour claims, including the failure to provide meal and rest periods); *Winzelberg v.*
3 *Liberty Mutual* (C.D. Cal. No. 07-0460) (settlement of misclassification-based overtime, meal
4 and rest break claims, as well as unreimbursed business expenses and wage statement
5 violations on behalf of a class of sales representatives); *In re The Pep Boys Overtime Action*
6 (C.D. Cal. No. 07-01755) (settlement of overtime, meal and rest break claims, and wage
7 statement violations on behalf of retail and “backshop” employees); *Blackner v. AmeriPark,*
8 *Inc.* (L.A. Super. Ct. No. BC363075) (settlement of overtime, meal and rest break claims, and
9 wage statement violations on behalf of valets and other similar non-exempt hourly
10 employees); *Perry v. SunAmerica* (C.D. Cal. No. 07-1193) (settlement of claims for unpaid
11 overtime, missed meal and rest periods, and unreimbursed expenses); *Flores v. CVS*
12 *Pharmacy, Inc., et al.* (C.D. Cal. No. 07-5326-FMC) (settlement on behalf of non-exempt
13 retail drugstore employees for unpaid overtime, meal and rest break claims, and wage
14 statement violations); *Padovani v. Citicorp Inv. Servs., Inc.* (C.D. Cal. No. 07-00113)
15 (settlement of misclassification-based unpaid overtime and missed meal and rest periods,
16 unlawful deductions, and unreimbursed business expenses on behalf of securities brokers);
17 *Clymer v. Candle Acquisition Co.* (L.A. Super. Ct. No. BC328765) (settlement for unpaid
18 overtime, meal and rest break claims, wage statement violations, and waiting time penalties);
19 *Mobley v. GlobeGround North Am. LLC, et al.* (L.A. Super. Ct. No. BC356051) (settlement of
20 wage statement claims for all non-exempt class members and subclass of bus drivers, settling
21 their meal and rest break claims); *Hill v. Eddie Bauer* (C.D. Cal. No. 06-05224) (settlement of
22 over 1000 non-exempt employees for several wage and hour violations); *Jost v. Sizzler USA*
23 *Rests., Inc.* (L.A. Super. Ct. No. BC326914) (settlement for unpaid overtime, meal and rest
24 break claims, waiting time penalties, forfeited vacation time, and wage statement violations on
25 behalf of general managers and restaurant managers); *Anderson v. Drive Time Car Sales, Inc.,*
26 *et al.* (L.A. Super. Ct. No. BC398475) (settlement of claims for unpaid overtime, meal and
27 rest break claims, waiting time penalties, wage statement violations, and unpaid off-the-clock
28 work for account representatives and loan managers); *Bank of the West Fin. Consultants Wage*

1 *and Hour Cases* (L.A. Super. Ct. JCCP No. 4508) (settlement of misclassification-based
2 overtime, wage statement violations, improper deductions, meal or rest break claims, claims
3 relating to keeping records of time worked, unreimbursed business expenses, waiting time
4 penalties for financial consultants and financial consultant trainees); *In Re AXA Wage and*
5 *Hour Litig.* (N.D. Cal. No. 06-4291) (settlement for unreimbursed business expenses,
6 improper deductions, meal and rest break claims, and claims relating to keeping records of
7 time worked); *In Re ML Stern Overtime Litig.* (S.D. Cal. No. 07-00118) (settlement on behalf
8 of class of misclassified account executives for unpaid overtime, missed meal and rest periods,
9 improper costs and deductions, and unreimbursed business expenses); *Acheson v. G.A.L.A.,*
10 *Inc., et al.* (Santa Clara Super. Ct. No. 107-099461) (settlement for overtime wages, split-shift
11 premiums, meal and rest break claims, waiting time penalties, and wage statement violations);
12 *Galtie v. ARS Nat'l Servs. Inc.* (San Diego Super. Ct. No. 37-2007-0056871) (settlement of
13 wage statement claims for all non-exempt class members); *Home Depot Employment Cases*
14 (L.A. Super. Ct. JCCP No. 4383) (settlement of wage and hour claims, including claims for
15 unpaid meal and rest period premiums); *Nevarez v. Trader Joe's Co.* (L.A. Super. Ct. No.
16 BC373910) (settlement on behalf of non-exempt employees for several wage and hour claims,
17 including meal and rest breaks); *Martinez v. Torrance Mem. Med. Ctr., et al.* (L.A. Super. Ct.
18 No. BC386630) (settlement on behalf of non-exempt employees for several wage and hour
19 claims, including the failure to pay meal and rest period premiums); *Wu v. California State*
20 *Auto. Ass'n, et al.* (Alameda Super. Ct. No. RG08-402621) (settlement on behalf of hourly
21 sales representatives and life insurance specialists for unreimbursed business expense claims);
22 *Ordaz v. Rose Hills Mortuary L.P., et al.* (L.A. Super. Ct. BC386500) (settlement on behalf of
23 sales representatives, sales associates, sales counselors, and persons with similar job duties of
24 business expense and wage statement claims); *Rivers v. Connect Television, Inc., et al.* (L.A.
25 Super. Ct. BC374605) (settlement on behalf of non-exempt warehouse and office workers of
26 several wage and hour claims, including meal and rest breaks claims); *Ward v. Doyon Sec.*
27 *Servs., LLC* (San Bernardino Super. Ct. BS 9000517) (settlement on behalf of non-exempt
28 employees for several wage and hour claims, including meal and rest breaks claims); *Perez*

1 *and Comeaux v. Standard Concrete Products, Inc.* (Orange County Super. Ct. No. 30-2008-
2 00211820) (settlement of several wage and hour claims, including claims for unpaid meal and
3 rest period premiums and overtime); *Taylor v. Mobile Mini, Inc.* (San Bernardino Super. Ct.
4 No. CIVSS705070) (settlement on behalf of current or former non-exempt truck drivers of
5 several wage and hour claims, including meal and rest break claims); *Weisbarth and List v.*
6 *H R Block Fin. Advisors, Inc.* (C.D. Cal. No. 07-00236) (settlement on behalf of financial
7 advisors of wage and hour claims); *Blair et al. v. Jo-Ann Stores, Inc.* (L.A. Super. Ct. No.
8 BC394795) (settlement on behalf of over ten thousand former and current employees of Jo-
9 Ann Stores of several wage and hour claims); *Bejarano v. Amerisave Mortgage Corp.* (E.D.
10 Cal. No. 08-00599) (settlement of several wage and hour claims); *Mares v. BFS Retail &*
11 *Commercial Operations, LLC* (L.A. Super. Ct. No. BC375967) (settlement of wage and hour
12 claims, including claims for unpaid meal and rest period premiums); *Berrymon v. St. Vincent*
13 *Med. Ctr.* (L.A. Super. Ct. No. BC391114) (settlement on behalf of over one thousand
14 employees for violation of Labor Code section 226); *Ronn v. Anthem Blue Cross* (Ventura
15 Super. Ct. No. 2008-00328601-CU-OE-VTA) (settlement on behalf of telemarketing
16 representatives for numerous wage and hour claims); *Contreras v. Bank of America, N.A.* (San
17 Francisco Super. Ct. No. CGC-07-467749) (settlement on behalf of mortgage loan officers for
18 multiple wage and hour claims, including the failure to reimburse for all business-related
19 expenses); and *Munoz v. J.C. Penney Corp., Inc.* (C.D. Cal. No. 09-00833) (settlement on
20 behalf of over 70,000 non-exempt former and current retail store employees for several wage
21 and hour claims, including the failure to pay premiums for missed meal and rest breaks);
22 *Chin v. Wachovia Financial Services Inc., et al.* (N.D. Cal. No. 08-00684) (settlement of wage
23 and hour claims, including the failure to provide meal and rest period premiums); *Burrows v.*
24 *Combined Ins. Co. of Am.* (E.D. Cal. No. 08-01752) (settlement on behalf of nearly 1000
25 current and former employees for various wage and hour claims including the failure to
26 reimburse for business expenses); *Cascarejo v. Pac. Cheese Co., Inc.* (Alameda Super. Ct. No
27 RG09457940) (settlement of wage and hour claims, including the failure to provide meal and
28 rest periods); *Kisliuk v. ADT Security Servs., Inc.* (C.D. Cal. No. 08-03241) (settlement of

1 wage and hour claims, including the failure to reimburse for business expenses, on behalf of a
2 class of over 3000 employees); *Silva v. Catholic Mortuary Servs., Inc.* (L.A. Super. Ct. No.
3 BC408054) (settlement of wage and hour claims including the failure to reimburse for
4 business related expenses); *Aguiar v. Cingular Wireless LLC et al.* (C.D. Cal. No. 05-02907)
5 (settlement of wage and hour claims, including the failure to provide meal and rest period
6 premiums, on behalf of a class of 11,800 persons); *Blue v. Coldwell Banker Residential*
7 *Brokerage Co.* (L.A. Super. Ct. No. BC417335) (settlement of wage and hour claims,
8 including the failure to provide meal and rest period premiums); *LaGaisse v. 20 20*
9 *Powervision* (Riverside Super. Ct. No. RIC 528973) (settlement of wage-and-hour claims,
10 including the failure to reimburse for business-related expenses); *Ethridge v. Universal Health*
11 *Servs.* (L.A. Super. Ct. No. BC391958) (settlement of several wage and hour claims, including
12 the failure to timely pay wages upon termination of employment); *Magee v. Am. Residential*
13 *Servs. LLC*, (L.A. Super. Ct. No. BC423798) (settlement of wage and hour claims, including
14 the failure to provide meal and rest period premiums); *Chin v. Countrywide Home Loans, Inc.*
15 (San Joaquin Super. Ct. No.: 39-2010-00252741-CU-OE-STK) (settlement of wage and hour
16 claims, including the failure to provide meal and rest period premiums); *Romani v. Mercury*
17 *Insurance, Inc.*, (Orange County Super. Ct. No. 06CC00134) (settlement of wage and hour
18 claims, including the failure to provide properly formatted wage statements); *Weyl v. Big 5*
19 *Corp.* (San Diego Super. Ct. No. 37-2009-00093109-CU-OE-CTL) (settlement of wage and
20 hour claims, including the failure to timely pay wages upon termination of employment); and
21 *Gutierrez v. Lowe's HIW, Inc.* (Stanislaus County Super. Ct. No. 657474) (settlement of wage
22 and hour claims, including the failure to provide adequate seating).

23 Initiative Frequently Receives Class Counsel Awards

24 Equalling One-Third of the Common Fund

25 6. Initiative frequently receives class counsel awards equalling approximately
26 one-third of the common fund: *Chin v. Countrywide Home Loans, Inc.* (San Joaquin Super.
27 Ct. No.: 39-2010-00252741-CU-OE-STK) (30% award); *Ethridge v. Universal Health Servs.*,
28 (L.A. Super. Ct. No. BC391958) (33% award); *Magee v. Am. Residential Servs. LLC*, (L.A.

1 Super. Ct. No. BC423798) (33% award); *Blue v. Coldwell Banker Residential Brokerage Co.,*
2 *et al.* (L.A. Super. Ct. No. BC417335) (33% award); *Aguiar v. Cingular Wireless LLC et al.*
3 (C.D. Cal. No. 05-02907) (30% award); *Silva v. Catholic Mortuary Servs., Inc.*, No.
4 BC408054 (L.A. Super. Ct.) (33% award); *Chin v. Wachovia Financial Services Inc. et al.*,
5 No. 08-00684 (N.D. Cal.) (33% award); *Burrows v. Combined Ins. Co. of Am.*, No. 08-01752
6 (E.D. Cal.) (33% award); *Mares v. BFS Retail & Comm. Operations LLC et al.*, No.
7 BC375967 (L.A. Super. Ct.) (33% award); *Bejarano v. Amerisave Mortgage Corp.*, No. CV
8 08-00599 (E.D. Cal.) (33% award); *Blair et al. v. Jo-Ann Stores, Inc.*, BC394795 (L.A. Super.
9 Ct.) (33% award); *Weisbarth and List v. H R Block Financial Advisors, Inc.*, No. 07-00236
10 (C.D. Cal.) (33% award); *Perez and Comeaux v. Standard Concrete*, No. 30-2008-00211820
11 (Orange County Super. Ct.) (33% award); *Ward v. Doyon Sec. Servs., LLC*, BS 9000517 (San
12 Bernardino Super. Ct.) (33% award); *Winzelberg v. Liberty Mutual Ins. Co.*, No. CV 07-460
13 (C.D. Cal) (33% award); *Perry v. SunAmerica*, No. CV 07-1193 (C. D. Cal.) (33% award);
14 *Barrett v. The St. John Companies*, No. BC354278 (L.A. Super. Ct.) (33% award); *Simpson v.*
15 *e*Trade*, No. CV 06-156 (C. D. Cal.) (33% award); *Clymer and Benton v. Candle Acquisition*
16 *Co.*, No. BC328765 (L.A. Super. Ct.) (33% award); *Dunlap v. Bank of America, N.A.*, No.
17 BC328934 (L.A. Super Ct.) (33% award); *Taylor v. Ross Stores, Inc.*, No. RCV 065453, JCCP
18 4331 (San Bernardino Super. Ct.) (33% award); *Case et al. v. Toyohara America Inc.*, No.
19 BC328111 (L.A. Super. Ct.) (33% award); *Sunio v. Marsh USA, Inc.*, No. BC328782 (L.A.
20 Super Ct.) (33% award); and *Kenemixay v. Nordstroms, Inc.*, No. BC318850 (L.A. Super. Ct.)
21 (50% award).

22 7. Further, California courts regularly approve attorneys' fees equalling one-third
23 of the common fund or higher: *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008)
24 (numerous studies have shown that "fee awards in class actions average around one-third of
25 the recovery"); *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San
26 Diego Super. Ct.) (40% award); *Chalmers v. Elecs. Boutique*, No. BC306571 (L.A. Super.
27 Ct.) (33% award); *Boncore v. Four Points Hotel IIT Sheraton*, No. GIC807456 (San Diego
28 Super. Ct.) (33% award); *Vivens, et al. v. Wackenhut Corp.*, No. BC290071 (L.A. Super. Ct.)

1 (31% award); *Crandall v. U-Haul Intl., Inc.*, No. BC178775 (L.A. Super. Ct.) (40% award);
2 *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Super. Ct.) (35% award); *Marroquin v.*
3 *Bed Bath & Beyond*, No. RG04145918 (Alameda Super. Ct.) (33% award); *In re Milk*
4 *Antitrust Litig.*, No. BC070061 (L.A. Super. Ct.) (33% award); *Sandoval v. Nissho of*
5 *California, Inc.*, No. 37-2009-00097861 (San Diego Super. Ct.) (33% award); *In re Liquid*
6 *Carbon Dioxide Cases*, No. J.C.C.P. 3012 (San Diego Super. Ct.) (33% award); *In re*
7 *California Indirect-Purchaser Plasticware Antitrust Litigation*, Nos. 961814, 963201, and
8 963590 (San Francisco Super. Ct.) (33% award); *Bright v. Kanzaki Specialty Papers*, No.
9 CGC-94-963598 (San Francisco Super. Ct.) (33% award); *Parker v. City of L.A.*, 44 Cal. App.
10 3d 556, 567-68 (1974) (33% award); *Kritz v. Fluid Components, Inc.*, No. GIN057142 (San
11 Diego Super. Ct.) (35% award); *Benitez, et al. v. Wilbur*, No. 08-01122 (E.D. Cal.) (33%
12 award); and *Chavez, et al. v. Petrissans, et al.*, No. 08-00122 (E.D. Cal.) (33% award);
13 *Vasquez v. Aartman*, No. 02-05624 (E.D. Cal.) (30% award); and *Leal v. Wyndham*
14 *Worldwide Corp.*, No. 37-2009-00084708 (San Diego Super. Ct.) (38% award).

15 Preclusion From Taking Other Cases

16 8. To properly handle and prosecute this case, Initiative was precluded from
17 taking other cases and, in fact, had to turn away other meritorious fee-generating cases.
18 Initiative typically receives 10 to 12 substantial telephone inquiries per week from individuals
19 seeking to pursue what they perceive to be employment-related claims. These calls are
20 received by the firm's client-intake department. This department is staffed by attorneys who
21 have extensive experience as litigators and devote a substantial amount of their time to
22 managing new matters and guiding them from the initial inquiry stages to investigation and
23 through the drafting of complaints and filing. These inquiries frequently involve high-profile
24 employers as prospective defendants. The firm is forced to decline numerous worthy cases
25 because attorney and staff-to-case ratios will not allow for any additional matters. Taking on
26 this case meant that Initiative had to turn away other fee-generating work because this case
27 required substantial firm resources on multiple fronts: pre-litigation investigation; formal and
28 informal discovery; research into Defendant's policies and practices; researching the causes of

1 action, particularly those in flux at the time of settlement; and legal and factual analyses in
2 preparation for settlement.

3 **Schedules of Fees and Costs**

4 9. I have reviewed a summary of the firm’s billing records and time entries, which
5 are maintained during the regular course of business. The following chart sets forth the
6 regular billable hourly rate (the rates are commensurate with the prevailing rates among firms
7 that regularly litigate wage and hour class actions) for each attorney who worked on this
8 matter, the hours worked by each attorney, and the fees that would have been charged if this
9 matter had been litigated at an hourly rate. Over the past year, Initiative’s billing rates have
10 been approved in the following cases: *Aguiar v. Cingular Wireless LLC et al.* (C.D. Cal. No.
11 05-02907); *Blue v. Coldwell Banker Residential Brokerage Co.* (L.A. Super. Ct. No.
12 BC417335); *Magee v. Am. Residential Servs. LLC*, (L.A. Super. Ct. No. BC423798); *Ethridge*
13 *v. Universal Health Servs.*, (L.A. Super. Ct. No. BC391958); *Romani v. Mercury Insurance,*
14 *Inc.*, (Orange County Super. Ct. No. 06CC00134); *Chin v. Countrywide Home Loans, Inc.*
15 (San Joaquin Super. Ct. No.: 39-2010-00252741-CU-OE-STK); *Gutierrez v. Lowe’s HIW, Inc.*
16 (Stanislaus County Super. Ct. No. 657474); and *LaGaisse v. 20 20 Powervision* (Riverside
17 Super. Ct. No. RIC 528973) (“[C]lass Counsel have justified the appropriateness of such an
18 award by way of their lodestar cross-check analysis, demonstrating to the Court’s satisfaction
19 that the attorney rates and hours billed to the litigation were reasonable.”)

20

Schedule of Fees				
Attorney	Title	Rate	Total Hours	Total Hmount
Art Meneses	Partner	\$685	43.7	\$29,934.50
Monica Balderrama	Partner	\$635	22.3	\$14,160.50
Marc Primo	Partner	\$590	198.5	\$117,115.00
Matthew Theriault	Partner	\$590	27	\$15,930.00
Gene Williams	Senior Counsel	\$565	237.1	\$133,961.50
Neda Roshanian	Former Associate	\$490	58.7	\$28,763.00
Mark Pifko	Former Associate	\$490	16.1	\$7,889.00
Orlando Arellano	Associate	\$470	152.9	\$71,863.00
Nathan Lowery	Associate	\$445	181	\$80,545.00
Dina Livhits	Associate	\$420	100.7	\$42,294.00
Jamie Greene	Associate	\$420	150.6	\$63,252.00

Schedule of Fees				
Attorney	Title	Rate	Total Hours	Total Hmount
Eduardo Santos	Associate	\$420	197.3	\$82,866.00
Megan Momeni	Former Associate	\$395	32.9	\$12,995.50
Enoch Kim	Associate	\$395	35.6	\$14,062.00
Justin Wilson-de Herrera	Associate	\$365	82.1	\$29,966.50
Kai Hsiao	Associate	\$365	47.3	\$17,264.50
Teddy O'Reilly	Former Associate	\$365	88	\$32,120.00
TOTAL			1671.8	\$794,982.00

10. Initiative’s hourly rates are comparable to those charged by Sheppard Mullin Richter & Hampton, a leading firm in the defense of wage and hour class actions that has frequently opposed Initiative: Partners: \$495-\$820 and Associates: \$270-\$620. Among Associates, the following hourly billing rates were used by Sheppard Mullin: 1st Year = \$270-\$335; 2nd Year = \$330-\$430, 3rd Year = \$365-\$475, 4th Year = \$395-\$510, 5th Year = \$420-\$540, 6th Year = \$445-\$565, 7th Year = \$470-\$595, 8th Year = \$490-\$620. See National Law Journal, *The 2010 NLJ Billing Survey: Associates*, December 6, 2010 (<http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202475565454>).

11. Further, Initiative’s rates are comparable to those of other judicially approved rates for plaintiff’s firms. See, e.g., *Faigman v. AT&T Mobility LLC*, 2011 U.S. Dist. LEXIS 15825, * 2 (N.D. Cal. Feb. 15, 2011) (approving hourly rates of \$650/hour for partner services and \$500/hour for associate attorney services); *Browne, et al. v. American Honda Motor Co., Inc.* (C.D. Cal. No. 09-06750, December 5, 2010) (approving the following hourly rates: 7th Year = \$445; 10th Year = \$545; 15th Year = \$675); *Rosa, et al. v. Morrison Homes, Inc.* (Stanislaus Super. Ct, Oct. 27, 2010, No. 373059) (Order on Final Approval finding \$650 per hour rate for partner reasonable and consistent with rates charged by attorneys with similar qualifications and experience in the prevailing community); *Richard v. Ameri-Force Mgmt. Servs., Inc.* (San Diego Super. Ct., August 27, 2010, No. 37-2008-00096019) (partner rates: \$695-\$750/hour; associate rate: \$495/hour); *Barrera v. Gamestop Corp.* (C.D. Cal. Nov. 29, 2010, No. CV 09-1399) (partner rate: \$700/hour; associate rate: \$475/hour); *Anderson v.*

1 *Nextel Retail Stores, LLC* (C.D. Cal. June 20, 2010, No. CV 07-4480) (partner rates: \$655-
2 \$750/hour; associate rates: \$300-\$515).

3 12. Over the course of this litigation, Initiative has incurred a total of \$102,597.06
4 in expenses, consisting of the following:

Schedule of Costs	
Expense Categories	Amount
Copying, Printing & Scanning and Facsimiles	\$1,071.95
Court Fees, Filings & Service of Process	\$8,666.19
Court Reporters, Transcripts & Depositions	\$1,917.92
Delivery & Messenger (UPS, FedEx, messenger, etc.)	\$165.39
Document Management and Production Services	\$5,108.77
Expert & Consulting Services	\$12,575.00
Information Technology Services	\$35.03
Investigation Services	\$33,623.68
Research Services (PACER, Lexis, etc.)	\$1,689.16
Mediation Fees	\$11,612.45
Postage & Mailings	\$18,732.86
Word-Processing & Staff Overtime	\$1,000.65
Telephone (Long distance, conference calls, etc.)	\$1,707.16
Travel & Lodging (Airfare, Mileage, Parking, Hotel, etc.)	\$4,690.85
TOTAL EXPENSES	\$102,597.06

17
18 13. These incurred expenses, which were recorded during the regular course of
19 business, were reasonable and necessary to properly prosecute this matter as a potential class
20 action and obtain a class-wide settlement.

21 14. Based on my firm’s investigation and evaluation of the evidence and law, the
22 settlement of this case is fair, reasonable, adequate and in the best interest of prospective class
23 members.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed this 16th day of August, 2011 at Los Angeles,
26 California.

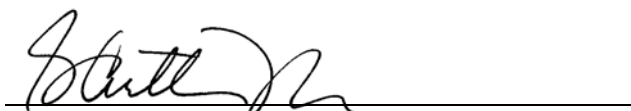
27 
28 G. Arthur Meneses

EXHIBIT E



☎ 415-603-5002

📠 415-840-7210

✉ lisabrown@gbgllp.com

BAR ADMISSIONS

California

New York

The District of Columbia

ELIZABETH "LISA" BROWN

Partner

Lisa Brown is a founding partner of GBG, a defense employment boutique based in San Francisco. Lisa splits her time between San Francisco and Los Angeles, representing clients in both Northern and Southern California. Her practice focuses on complex employment litigation, wage and hour class actions, and representative actions under the California Private Attorneys General Act (PAGA). Lisa is also an experienced trial attorney who has second-chaired a number of jury trials and first-chaired administrative proceedings.

An experienced litigator, Lisa defends employers against claims of harassment, discrimination, retaliation and wrongful termination, and wage and hour violations brought by current and former employees. She has handled class action and single plaintiff matters from inception through discovery, summary adjudication, class certification, and trial in state and federal courts. Lisa also investigates and responds to administrative charges before the California Department of Fair Employment and Housing and the Equal Employment Opportunity Commission, and she conducts independent investigations of employee complaints.

Prior to founding this firm with Jeff and Tom, Lisa was an Of Counsel in the employment law department of Paul Hastings LLP. Before Paul Hastings, Lisa clerked for the Honorable K. Gary Sebelius and practiced law in Washington, DC.

EDUCATION

- University of Chicago Law School, J.D., 2001
- Indiana University, B.A., 1998, *summa cum laude*; (double major and double minor)

Key Practice & Industry Experience	Representative Matters	Professional & Civic
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Recognitions & Honors

KEY PRACTICE AREAS

- Complex wage and hour litigation, including PAGA representative actions
- Trial
- High-stakes advice and counsel

KEY INDUSTRIES

- Extensive experience in telecommunications and transportation logistics
- Advice and counsel for companies new to California's employment regimes

Key Practice & Industry Experience	Representative Matters	Professional & Civic
Recognitions & Honors	REPRESENTATIVE MATTERS	
<ul style="list-style-type: none">• Defeated class certification in a security check class action, <i>Coates v. United Parcel Service, Inc.</i>• Defeated class certification in an alleged timecard manipulation class action, <i>Dominguez v. United Parcel Service, Inc.</i>• Defeated class certification in an alleged manager misclassification class action, <i>Wong v. AT&T Mobility Services LLC</i>• Obtained multiple summary judgment victories in cases involving discrimination, retaliation, harassment, misclassification and other claims• Multiple trial victories in cases involving misclassification and wrongful termination		

Key Practice & Industry Experience	Representative Matters	Professional & Civic	PUBLI
Recognitions & Honors	CATIONS & PRESENTATIONS		
<ul style="list-style-type: none">• Lisa is frequently invited by corporate counsel and human resources leaders to speak on topics related to PAGA, wage and hour class actions, and general employment law issues.			
COMMUNITY INVOLVEMENT			
<ul style="list-style-type: none">• Board Member – Options for Learning, an early childhood education organization			

Key Practice & Industry Experience	Representative Matters	Professional & Civic	RECOG
Recognitions & Honors	RECOGNITIONS & HONORS <ul style="list-style-type: none">• Rising Star, the Southern California Super Lawyers• Super Lawyer, the Northern California Super Lawyers		

EXHIBIT F



☎ 415-603-5005

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✉ jensvanfeldt@gbgllp.com

BAR ADMISSIONS

California

JENNIFER SVANFELDT

Partner

Jennifer Svanfeldt is a partner based in the San Francisco office of GBG. She is a labor and employment attorney with nearly 17 years of experience in complex litigation, including wage-and-hour class actions and representative actions under the California Private Attorneys General Act (PAGA).

As an experienced litigator, Jennifer has defeated and successfully resolved single-plaintiff discrimination, harassment, retaliation and wrongful termination cases in court and in arbitration. She also investigates and responds to administrative charges before the California Department of Fair Employment and Housing (DFEH), the Equal Employment Opportunity Commission (EEOC) and the California Division of Labor Standards Enforcement (DLSE), and conducts independent investigations of employee complaints.

Prior to joining GBG, Jennifer was part of the employment law practice of Morgan, Lewis & Bockius LLP. Before Morgan Lewis, Jennifer was an associate at Seyfarth Shaw LLP. Jennifer served as an extern with Magistrate Judge Joseph Spero of the United States District Court for the Northern District of California.

EDUCATION

- University of California, Hastings College of the Law, J.D., 2004
- University of Washington, B.A., 2000

Key Practice & Industry Experience

Representative Matters

KEY PRACTICE EXPERIENCE

- Complex wage and hour litigation, including PAGA representative actions
- Single plaintiff litigation

KEY INDUSTRIES

- Telecommunications
- Automotive
- Energy
- Transportation logistics

Key Practice & Industry Experience

Representative Matters

REPRESENTATIVE

E MATTERS

- Defeated class certification in a security check class action, *Coates v. United Parcel Service, Inc.*(2019)
- Defeated class certification in an alleged timecard manipulation class action, *Dominguez v. United Parcel Service, Inc.* (2020)
- Defeated class certification of meal and rest break claims and obtained summary judgment on wage statement claim, *Santos v. United Parcel Service, Inc.* (2021)
- Defeated class certification in an alleged meal and rest break class action, *Koval v. Pacific Bell Telephone Company* (2013), affirmed on appeal (2014)
- Obtained multiple summary judgment victories in cases involving discrimination, retaliation, defamation, breach of contract and other claims.

EXHIBIT G



☎ 213-358-2813

📠 213-995-6382

✉ matthewmorris@gbglp.com

BAR ADMISSIONS

California

MATTHEW MORRIS

Associate

Matt Morris represents employers in a wide variety of civil matters ranging from single plaintiff lawsuits alleging wrongful termination to representative class actions dealing with various wage and hour issues. Matt has extensive expertise in assisting employers with all aspects of civil litigation, from initial case assessment to discovery to summary adjudication briefing. He has also extensive experience litigating representative actions arising under California’s Private Attorneys General Act. To that end, Matt has successfully defeated numerous class/PAGA actions at both the class certification stage and on summary adjudication.

Prior to joining GBG, Matt worked as civil litigator at a top international law firm, where he litigated a wide variety of civil matters including cases dealing with misappropriation of trade secrets and international disputes pertaining to ownership rights of high value art pieces.

Before starting his legal career, Matt taught English and Literature at Chongqing Technology and Business University (重庆工商大学) in Chongqing China, where he captained a local rugby team and ate too much hotpot.

EDUCATION

- Loyola Law School, Los Angeles, J.D. (First Honors in tort and property law)
- Missouri State University, B.S. *cum laude* in the Honors College

Key Practice & Industry Experience

Recognitions & Honors

KEY PRACTICE EXPERIENCE

- Achieved complete dismissal of all claims at summary judgment in single plaintiff matter alleging disability discrimination and alleged retaliation for exercising rights under California Family Rights Act.
- Achieved complete dismissal of all claims at summary judgment in single plaintiff matter alleging racial discrimination after the was terminated due to a reduction in force.
- Defeated class certification in class action alleging violations of California’s meal and rest breaks laws for international shipping and logistics company.
- Conducted wide scale confidential investigations into alleged timecard manipulation scheme for international clients.

- Coordinated and managed years long complex discovery plan in Federal trade secret misappropriation action.
- Drafted comprehensive provenance reports of high value art pieces, which analyzed ownership rights under various international legal regimes, enabling owners to confidently sell their multimillion-dollar musical instruments and paintings with clear chain of title.
- Represented and counseled dozens of employees in a high-profile regulatory investigation relating to alleged unethical banking practices.
- Has drafted and developed best practices guidelines for numerous new-media production companies to ensure compliance with California OSHA guidelines and other regulatory bodies.
- Coordinated an international team of attorneys on data privacy matters to ensure regulatory compliance in a number of different countries throughout Europe, Asia, and the Middle East.

KEY INDUSTRIES

- Healthcare
- Automotive
- Shipping and Logistics
- Film and Media Production
- Fine Art
- Telecommunications

Key Practice & Industry Experience

Recognitions & Honors

RECOGNITIONS &

HONORS

- Ann and Denis Beaver Scholarship for Summer Study in Paris (Sorbonne)

EXHIBIT H

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
11/14/2019	Silvia Kirollos (Formerly Employed 1st Year Legal Secretary)	Called Client/ Retainer Agreement	0.25	\$ 150.00	\$ 37.50
11/15/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Initial call with client re: facts of case	0.83	\$ 350.00	\$ 290.50
11/18/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Draft LWDA letter	3.00	\$ 350.00	\$ 1,050.00
11/20/2019	Silvia Kirollos (Formerly Employed 1st Year Legal Secretary)	Mailed Client retainer	0.42	\$ 150.00	\$ 63.00
11/22/2019	Silvia Kirollos (Formerly Employed 1st Year Legal Secretary)	call client re retainer	0.08	\$ 150.00	\$ 12.00
11/27/2019	Breck Oyama (13th Year Paralegal)	lwda notice	1.00	\$ 300.00	\$ 300.00
11/27/2019	Silvia Kirollos (Formerly Employed 1st Year Legal Secretary)	call client re retainer	0.25	\$ 150.00	\$ 37.50
12/2/2019	Silvia Kirollos (Formerly Employed 1st Year Legal Secretary)	call client re retainer	0.17	\$ 150.00	\$ 25.50
12/3/2019	Silvia Kirollos (Formerly Employed 1st Year Legal Secretary)	save retainer	0.08	\$ 150.00	\$ 12.00
12/6/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Drafted class action complaint; call with client re: REDACTED	2.00	\$ 350.00	\$ 700.00
12/7/2019	David Spivak (25th Year Attorney)	Review and revise complaint	0.33	\$ 700.00	\$ 231.00
12/9/2019	Lizzett Cortez (9th Year Paralegal)	drafted ev pres letters, scanned, and mailed. Calendared deadline	0.67	\$ 250.00	\$ 167.50
12/10/2019	David Spivak (25th Year Attorney)	review complaint again	0.17	\$ 700.00	\$ 119.00
12/11/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Discussion with BO re: warehouse address; call & email to client re: REDACTED	0.16	\$ 350.00	\$ 56.00
12/11/2019	Breck Oyama (13th Year Paralegal)	prep S&C for filing	0.50	\$ 300.00	\$ 150.00
12/11/2019	Breck Oyama (13th Year Paralegal)	text client, finalize S&C forms, upload rapidlegal for filing	0.75	\$ 300.00	\$ 225.00
12/11/2019	Lizzett Cortez (9th Year Paralegal)	Called witnesses that the client provided to carl. Was not able to get a hold of them. emailed dgs and CK	0.17	\$ 250.00	\$ 42.50
12/20/2019	Lizzett Cortez (9th Year Paralegal)	Added vcard for OC	0.08	\$ 250.00	\$ 20.00
12/23/2019	Breck Oyama (13th Year Paralegal)	file serve notice cmc, calendar deadlines	0.75	\$ 300.00	\$ 225.00
12/26/2019	Lizzett Cortez (9th Year Paralegal)	saved OC It to file	0.08	\$ 250.00	\$ 20.00
12/27/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Discussion with DGS re mediator selection, email to OC	0.16	\$ 350.00	\$ 56.00
1/16/2020	Breck Oyama (13th Year Paralegal)	prep jury demand and certificate of interested parties	0.50	\$ 300.00	\$ 150.00
1/16/2020	Breck Oyama (13th Year Paralegal)	review/download fed court docs; calendar deadlines	1.00	\$ 300.00	\$ 300.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
1/16/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Reviewed Judge Staton's procedures and standing order	0.50	\$ 350.00	\$ 175.00
1/17/2020	Breck Oyama (13th Year Paralegal)	review orders, calendar deadlines re 26f and scheduling conf	0.50	\$ 300.00	\$ 150.00
1/17/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed Judge Staton's previous ruling on [REDACTED]	0.83	\$ 350.00	\$ 290.50
1/17/2020	Breck Oyama (13th Year Paralegal)	efile jury demand and notice interested parties, update chambers copies rules, submit order w/ onelegal	0.75	\$ 300.00	\$ 225.00
1/22/2020	Breck Oyama (13th Year Paralegal)	save/review order, update tasks and calendar 23-3	0.50	\$ 300.00	\$ 150.00
1/23/2020	Breck Oyama (13th Year Paralegal)	save/review order, update calendar	0.50	\$ 300.00	\$ 150.00
1/23/2020	Breck Oyama (13th Year Paralegal)	save/review standing order	0.25	\$ 300.00	\$ 75.00
1/31/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Reviewed Judge Walter's standing order; draft 26-f report	1.25	\$ 350.00	\$ 437.50
2/3/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Drafted 1AC	0.58	\$ 350.00	\$ 203.00
2/3/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Prepared 23-3 stip and 26-f report	1.00	\$ 350.00	\$ 350.00
2/4/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	23-3 stip and 26(f) report	1.00	\$ 350.00	\$ 350.00
2/4/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Emails to OC re 26(f) conference	0.17	\$ 350.00	\$ 59.50
2/5/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	26f report, discussion with BO & LC re discovery prep, discussion with DGS re 26f conference	1.25	\$ 350.00	\$ 437.50
2/6/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	26f conference prep; discussion with DGS; 26f conference	1.50	\$ 350.00	\$ 525.00
2/6/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call with client	0.25	\$ 350.00	\$ 87.50
2/6/2020	David Spivak (25th Year Attorney)	prep for 26f with CK; 26f teleconference with OC	1.17	\$ 700.00	\$ 819.00
2/9/2020	David Spivak (25th Year Attorney)	review and revise 1AC	0.42	\$ 700.00	\$ 294.00
2/14/2020	Breck Oyama (13th Year Paralegal)	emails DGS/CK re stip continue (DGS schedule conflict)	0.50	\$ 300.00	\$ 150.00
2/19/2020	Breck Oyama (13th Year Paralegal)	save/calendar deadlines, update litigation chains	1.00	\$ 300.00	\$ 300.00
2/19/2020	Breck Oyama (13th Year Paralegal)	mtg w/ CK re stip	0.50	\$ 300.00	\$ 150.00
2/19/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Edits and revisions to stip, decl, proposed order re scheduling conference; emails with OC	1.00	\$ 350.00	\$ 350.00
2/20/2020	Breck Oyama (13th Year Paralegal)	draft discovery	2.00	\$ 300.00	\$ 600.00
2/20/2020	Lizzett Cortez (9th Year Paralegal)	Scanned Defendant discovery, calendared, and emailed to client	0.33	\$ 250.00	\$ 82.50
2/20/2020	Breck Oyama (13th Year Paralegal)	prep discovery and PMK notice, email CK	1.25	\$ 300.00	\$ 375.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
2/21/2020	Breck Oyama (13th Year Paralegal)	review docket, update calendar	0.17	\$ 300.00	\$ 51.00
2/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Edits and revisions to discovery requests, PMK depo notice	0.75	\$ 350.00	\$ 262.50
2/25/2020	David Spivak (25th Year Attorney)	review Frlekin decision	0.67	\$ 700.00	\$ 469.00
2/25/2020	David Spivak (25th Year Attorney)	meet with Carl re Frlekin	0.25	\$ 700.00	\$ 175.00
2/25/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call with potential class rep; discussion with DGS	0.42	\$ 350.00	\$ 147.00
2/25/2020	Breck Oyama (13th Year Paralegal)	review CK redlines discovery, research re REDACTED	1.00	\$ 300.00	\$ 300.00
2/26/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ client re R4P and saved client emails	1.17	\$ 250.00	\$ 292.50
2/26/2020	David Spivak (25th Year Attorney)	dgs call with Lisa Hill re Frlekin decision and mediation	0.25	\$ 700.00	\$ 175.00
2/27/2020	Lizzett Cortez (9th Year Paralegal)	Drafted cover lt re docs. mailed client 2 boxes for docs, docs list, and questionnaire	0.33	\$ 250.00	\$ 82.50
2/27/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Interview pcm	0.50	\$ 350.00	\$ 175.00
3/4/2020	Breck Oyama (13th Year Paralegal)	save reassignment notice and new judge orders	0.25	\$ 300.00	\$ 75.00
3/4/2020	Breck Oyama (13th Year Paralegal)	f/u DGS re discovery	0.08	\$ 300.00	\$ 24.00
3/4/2020	Breck Oyama (13th Year Paralegal)	send autho to PCM, prep evid pres lt, email OC and calendar, msg w/ CK	1.50	\$ 300.00	\$ 450.00
3/4/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Discussion with DGS; call, email to OC; redline 1AC	0.42	\$ 350.00	\$ 147.00
3/5/2020	Breck Oyama (13th Year Paralegal)	save/review standing order new judge	0.17	\$ 300.00	\$ 51.00
3/9/2020	Breck Oyama (13th Year Paralegal)	finalize and serve discovery	1.75	\$ 300.00	\$ 525.00
3/9/2020	Lizzett Cortez (9th Year Paralegal)	messed client re docs	0.08	\$ 250.00	\$ 20.00
3/10/2020	Breck Oyama (13th Year Paralegal)	check w/ DGS re discovery revisions for discovery already served	0.17	\$ 300.00	\$ 51.00
3/11/2020	Lizzett Cortez (9th Year Paralegal)	Emailed OC re depo and discovey extension	0.08	\$ 250.00	\$ 20.00
3/11/2020	Breck Oyama (13th Year Paralegal)	email courtesy copies of amended discovery	0.25	\$ 300.00	\$ 75.00
3/11/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	drafted stip to file 1AC	0.50	\$ 350.00	\$ 175.00
3/11/2020	Breck Oyama (13th Year Paralegal)	revise discovery, prep/serve amended and email OC re withdraw, update calendar	1.50	\$ 300.00	\$ 450.00
3/11/2020	Breck Oyama (13th Year Paralegal)	call w/ FedEx SameDay to correct address	0.50	\$ 300.00	\$ 150.00
3/11/2020	Lizzett Cortez (9th Year Paralegal)	call with client. Drafted initial disclosures	1.50	\$ 250.00	\$ 375.00
3/11/2020	Breck Oyama (13th Year Paralegal)	email client copies of discovery and update docs shared	0.25	\$ 300.00	\$ 75.00
3/11/2020	Breck Oyama (13th Year Paralegal)	prep evid pres to Ds agent for pcm, mail and update calendar	0.75	\$ 300.00	\$ 225.00
3/11/2020	Breck Oyama (13th Year Paralegal)	update note re new judge chambers copies rules	0.17	\$ 300.00	\$ 51.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
3/12/2020	Breck Oyama (13th Year Paralegal)	email OC courtesy copies of amended discovery	0.17	\$ 300.00	\$ 51.00
3/12/2020	Breck Oyama (13th Year Paralegal)	call w/ FEdEx to confirm delivery	0.50	\$ 300.00	\$ 150.00
3/13/2020	Lizzett Cortez (9th Year Paralegal)	Scanned client docs	0.67	\$ 250.00	\$ 167.50
3/13/2020	Lizzett Cortez (9th Year Paralegal)	Reviewed schedule for depo. emailed OC re depo and extension	0.25	\$ 250.00	\$ 62.50
3/17/2020	Lizzett Cortez (9th Year Paralegal)	drafted template to respond to R4P set 1. Reviewed client docs.	2.50	\$ 250.00	\$ 625.00
3/17/2020	Lizzett Cortez (9th Year Paralegal)	emailed OC re deep notice and saved Joint CMC statement	0.17	\$ 250.00	\$ 42.50
3/19/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Discussion with LC re deposition timing, emails to OC	0.33	\$ 350.00	\$ 115.50
3/19/2020	Lizzett Cortez (9th Year Paralegal)	emailed OC re Pmq depo and extension to initial disclosures. Message Ck re pl depo dates. updated calendared	0.25	\$ 250.00	\$ 62.50
3/20/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	drafted 23-3 relief stip	0.42	\$ 350.00	\$ 147.00
3/20/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Edits and revisions to stip 1AC, drafted proposed order & emailed to OC	0.50	\$ 350.00	\$ 175.00
3/23/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Revisions to 1AC	0.17	\$ 350.00	\$ 59.50
3/23/2020	Breck Oyama (13th Year Paralegal)	review stip1AC and msg w/ LC, email OLC re chambers copies	0.50	\$ 300.00	\$ 150.00
3/23/2020	Lizzett Cortez (9th Year Paralegal)	Mg CK re Stip and Order. Efiled. Saved filed versions. Mg Central district re missing ex. Efiled exhibit. Uploaded proposed order to Judge. Saved NEF.	1.50	\$ 250.00	\$ 375.00
3/23/2020	David Spivak (25th Year Attorney)	review stip re 23-3	0.25	\$ 700.00	\$ 175.00
3/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Emails to OC	0.25	\$ 350.00	\$ 87.50
3/25/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Edits and revisions to 23-3 stip, draft proposed order	1.00	\$ 350.00	\$ 350.00
3/25/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Read Bouphekeo decision	0.50	\$ 350.00	\$ 175.00
3/25/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Emails to OC	0.17	\$ 350.00	\$ 59.50
3/26/2020	Breck Oyama (13th Year Paralegal)	msg LC re stip filing	0.17	\$ 300.00	\$ 51.00
3/26/2020	Lizzett Cortez (9th Year Paralegal)	Mtg Ck re stip. converted stip and order to pdf. efiled. saved efiled docs	1.00	\$ 250.00	\$ 250.00
3/30/2020	Breck Oyama (13th Year Paralegal)	review emails, update calendar re D responses	0.17	\$ 300.00	\$ 51.00
3/30/2020	Lizzett Cortez (9th Year Paralegal)	Downloaded and saved order to file	0.08	\$ 250.00	\$ 20.00
3/30/2020	Breck Oyama (13th Year Paralegal)	emails/messages with team re re-filing stip 1AC	0.25	\$ 300.00	\$ 75.00
3/31/2020	Lizzett Cortez (9th Year Paralegal)	Call with client re case.	0.33	\$ 250.00	\$ 82.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
3/31/2020	Lizzett Cortez (9th Year Paralegal)	responded to R4P set 1	1.42	\$ 250.00	\$ 355.00
4/1/2020	Lizzett Cortez (9th Year Paralegal)	Paga Search. Saved to file.	0.17	\$ 250.00	\$ 42.50
4/1/2020	Lizzett Cortez (9th Year Paralegal)	Workers Comp search, saved results to file.	0.17	\$ 250.00	\$ 42.50
4/1/2020	Lizzett Cortez (9th Year Paralegal)	bates tabled docs.	0.08	\$ 250.00	\$ 20.00
4/1/2020	Lizzett Cortez (9th Year Paralegal)	Reviewed client docs and combined. OCR file. Final review for redactions	1.50	\$ 250.00	\$ 375.00
4/1/2020	Lizzett Cortez (9th Year Paralegal)	Finalized reps r4p	0.50	\$ 250.00	\$ 125.00
4/1/2020	Lizzett Cortez (9th Year Paralegal)	Emailed dgs R4P Responses	0.08	\$ 250.00	\$ 20.00
4/1/2020	Lizzett Cortez (9th Year Paralegal)	Call with client re REDACTED	0.33	\$ 250.00	\$ 82.50
4/2/2020	Lizzett Cortez (9th Year Paralegal)	Finalized initial disclosures. Reviewed docs for additional names. Emailed to dgs for review.	1.00	\$ 250.00	\$ 250.00
4/2/2020	Lizzett Cortez (9th Year Paralegal)	redacted emails	0.17	\$ 250.00	\$ 42.50
4/2/2020	David Spivak (25th Year Attorney)	Review and revise R4P responses	0.75	\$ 700.00	\$ 525.00
4/2/2020	Lizzett Cortez (9th Year Paralegal)	Saved clients additional docs to file. and fwd email to filvine.	0.08	\$ 250.00	\$ 20.00
4/3/2020	David Spivak (25th Year Attorney)	review initial disclosures	0.17	\$ 700.00	\$ 119.00
4/3/2020	Breck Oyama (13th Year Paralegal)	update deadline chain re class cert mx	0.25	\$ 300.00	\$ 75.00
4/3/2020	Breck Oyama (13th Year Paralegal)	calendar briefing schedule re class cert	0.17	\$ 300.00	\$ 51.00
4/6/2020	Breck Oyama (13th Year Paralegal)	review calendar, email LC re IDs	0.08	\$ 300.00	\$ 24.00
4/7/2020	Breck Oyama (13th Year Paralegal)	research competing cases	0.50	\$ 300.00	\$ 150.00
4/7/2020	David Spivak (25th Year Attorney)	call from AJ Bhomik re related cases	0.08	\$ 700.00	\$ 56.00
4/8/2020	Lizzett Cortez (9th Year Paralegal)	emailed client docs	0.17	\$ 250.00	\$ 42.50
4/8/2020	Lizzett Cortez (9th Year Paralegal)	emailed client contact email	0.08	\$ 250.00	\$ 20.00
4/8/2020	Lizzett Cortez (9th Year Paralegal)	emailed client Def's Initial Discloses	0.08	\$ 250.00	\$ 20.00
4/8/2020	Lizzett Cortez (9th Year Paralegal)	Messaged CK re redactions	0.08	\$ 250.00	\$ 20.00
4/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with LC, email to OC	0.33	\$ 350.00	\$ 115.50
4/13/2020	Breck Oyama (13th Year Paralegal)	update depo deadline chain	0.08	\$ 300.00	\$ 24.00
4/13/2020	Lizzett Cortez (9th Year Paralegal)	filed 1AC, saved and submitted to LWDA. Emailed to client and calendared DEF answer	0.83	\$ 250.00	\$ 207.50
4/13/2020	Breck Oyama (13th Year Paralegal)	save/review order, email LC re 1AC	0.17	\$ 300.00	\$ 51.00
4/15/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ client re case	0.17	\$ 250.00	\$ 42.50
4/15/2020	Lizzett Cortez (9th Year Paralegal)	Returned Clients call and left a voicemail	0.08	\$ 250.00	\$ 20.00
4/16/2020	Lizzett Cortez (9th Year Paralegal)	scrubbed 1AC and emailed AJ 1AC in word version	0.17	\$ 250.00	\$ 42.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
4/16/2020	Breck Oyama (13th Year Paralegal)	update deadline chain	0.08	\$ 300.00	\$ 24.00
4/17/2020	Lizzett Cortez (9th Year Paralegal)	drafted CPRA request ltr and emails.	0.25	\$ 250.00	\$ 62.50
4/18/2020	David Spivak (25th Year Attorney)	review and revise AJB's changes to 1AC	0.58	\$ 700.00	\$ 406.00
4/21/2020	Lizzett Cortez (9th Year Paralegal)	Call with AJ. Added additional paragraph. Emailed redline version.	0.33	\$ 250.00	\$ 82.50
4/24/2020	Breck Oyama (13th Year Paralegal)	review stip and email CK	0.33	\$ 300.00	\$ 99.00
4/24/2020	Lizzett Cortez (9th Year Paralegal)	messaged CK re stip. Emailed Ck Complaint w/ final redlines	0.25	\$ 250.00	\$ 62.50
4/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	draft stip file consolidated complaint & proposed order	0.67	\$ 350.00	\$ 234.50
4/24/2020	Lizzett Cortez (9th Year Paralegal)	drafted amended depo notices and POS. Emailed to def	0.33	\$ 250.00	\$ 82.50
4/24/2020	Lizzett Cortez (9th Year Paralegal)	Saved DLSE invoice. emailed dgs. Drafted Co counsel agreement. emailed to dgs	0.67	\$ 250.00	\$ 167.50
4/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	edits and revisions to stip; email to co-counsel and oc	0.33	\$ 350.00	\$ 115.50
4/27/2020	Lizzett Cortez (9th Year Paralegal)	emailed dgs re DLSE address.	0.08	\$ 250.00	\$ 20.00
4/27/2020	Lizzett Cortez (9th Year Paralegal)	emailed client amended depo notice	0.08	\$ 250.00	\$ 20.00
4/27/2020	Lizzett Cortez (9th Year Paralegal)	emailed BO re template. Updated co counsel agreement w/ case no. emailed dgs new version.	0.25	\$ 250.00	\$ 62.50
4/28/2020	Breck Oyama (13th Year Paralegal)	prelim tasks	0.50	\$ 300.00	\$ 150.00
4/28/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Emails to OC	0.33	\$ 350.00	\$ 115.50
4/28/2020	David Spivak (25th Year Attorney)	Review and revise cocounsel agreement	0.25	\$ 700.00	\$ 175.00
4/29/2020	Lizzett Cortez (9th Year Paralegal)	updated co counsel agreement and emailed to AJ for signature.	0.25	\$ 250.00	\$ 62.50
4/30/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	messages with LC; email to OC	0.17	\$ 350.00	\$ 59.50
4/30/2020	Lizzett Cortez (9th Year Paralegal)	Messaged Ck re final stip. converted docs and efiled. Uploaded proposed order and emailed mike re mandatory copies.	0.67	\$ 250.00	\$ 167.50
4/30/2020	Lizzett Cortez (9th Year Paralegal)	emailed client cocounsel agreement and saved to file	0.17	\$ 250.00	\$ 42.50
4/30/2020	Lizzett Cortez (9th Year Paralegal)	Saved cocounsel signed agreement. emailed to dgs for signature	0.17	\$ 250.00	\$ 42.50
5/1/2020	Breck Oyama (13th Year Paralegal)	review tasks	0.50	\$ 300.00	\$ 150.00
5/1/2020	Lizzett Cortez (9th Year Paralegal)	submitted Consolidated complaint to LWDA. Saved submissions to file	0.25	\$ 250.00	\$ 62.50
5/1/2020	Lizzett Cortez (9th Year Paralegal)	filed complaint and emailed AJ. saved filed versions and emailed mike for chambers copies	0.50	\$ 250.00	\$ 125.00
5/1/2020	Breck Oyama (13th Year Paralegal)	check w/ LC re consolidated complaint, update calendar	0.25	\$ 300.00	\$ 75.00
5/4/2020	Lizzett Cortez (9th Year Paralegal)	saved Aviles Notice of Appearance	0.08	\$ 250.00	\$ 20.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
5/5/2020	Breck Oyama (13th Year Paralegal)	draft and email CPRA reqs to LWDA	0.25	\$ 300.00	\$ 75.00
5/5/2020	Breck Oyama (13th Year Paralegal)	research PAGA cases	0.50	\$ 300.00	\$ 150.00
5/6/2020	Breck Oyama (13th Year Paralegal)	research REDACTED	0.17	\$ 300.00	\$ 51.00
5/6/2020	Lizzett Cortez (9th Year Paralegal)	Combined pl additional doc production, bates labeled, and emailed to OC.	0.58	\$ 250.00	\$ 145.00
5/18/2020	Breck Oyama (13th Year Paralegal)	save/review CPRA results, research competing cases/dockets	1.00	\$ 300.00	\$ 300.00
5/22/2020	Lizzett Cortez (9th Year Paralegal)	saved and fwd defs answer to file and filevine	0.17	\$ 250.00	\$ 42.50
5/28/2020	David Spivak (25th Year Attorney)	review email from OC re proper parties for discovery; email TSLF team	0.08	\$ 700.00	\$ 56.00
5/28/2020	Breck Oyama (13th Year Paralegal)	prep r4p set 2 re PCM	0.50	\$ 300.00	\$ 150.00
5/28/2020	Breck Oyama (13th Year Paralegal)	review discovery served and email from OC, prep corrected r4p	0.33	\$ 300.00	\$ 99.00
5/28/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with BO & LC re discovery; discussion with DGS; call, email to OC	0.58	\$ 350.00	\$ 203.00
5/29/2020	Breck Oyama (13th Year Paralegal)	prep BW stip and protective order	1.50	\$ 300.00	\$ 450.00
5/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call, email with OC re discovery	0.33	\$ 350.00	\$ 115.50
6/2/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Email to OC re discovery	0.08	\$ 350.00	\$ 28.00
6/4/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ client re REDACTED	0.17	\$ 250.00	\$ 42.50
6/4/2020	Breck Oyama (13th Year Paralegal)	email team revised stips and draft dismissal	0.25	\$ 300.00	\$ 75.00
6/4/2020	David Spivak (25th Year Attorney)	review OC proposal re discovery and dismissal	0.08	\$ 700.00	\$ 56.00
6/4/2020	Breck Oyama (13th Year Paralegal)	assemble and re-serve amended discovery	0.50	\$ 300.00	\$ 150.00
6/4/2020	Breck Oyama (13th Year Paralegal)	review/revise stips	1.00	\$ 300.00	\$ 300.00
6/4/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with BO re revised discovery	0.08	\$ 350.00	\$ 28.00
6/4/2020	David Spivak (25th Year Attorney)	review and revise BW order and confidentiality stip	0.75	\$ 700.00	\$ 525.00
6/4/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	emails, call with OC re discovery	0.25	\$ 350.00	\$ 87.50
6/5/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Email protective order to OC	0.08	\$ 350.00	\$ 28.00
6/5/2020	Breck Oyama (13th Year Paralegal)	finalize/scrub protective order	0.25	\$ 300.00	\$ 75.00
6/8/2020	Lizzett Cortez (9th Year Paralegal)	Added new witnesses to filevine	0.17	\$ 250.00	\$ 42.50
6/8/2020	David Spivak (25th Year Attorney)	Review stip to dismiss defendant UPS Supply	0.50	\$ 700.00	\$ 350.00
6/9/2020	Breck Oyama (13th Year Paralegal)	scrub and email stips to CC	0.50	\$ 300.00	\$ 150.00
6/9/2020	Breck Oyama (13th Year Paralegal)	check w/ CK re dismissal & protective order	0.17	\$ 300.00	\$ 51.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
6/9/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Reviewed redlines to stips, emails to OC and co-counsel; edits & revisions; email to BO	0.50	\$ 350.00	\$ 175.00
6/9/2020	Breck Oyama (13th Year Paralegal)	review magistrate procedures, create redline comparison of protective order for filing	0.50	\$ 300.00	\$ 150.00
6/10/2020	Breck Oyama (13th Year Paralegal)	f/u CC re stip dismiss, email OC	0.50	\$ 300.00	\$ 150.00
6/11/2020	Breck Oyama (13th Year Paralegal)	f/u OC re stip dismiss, email BW stip	0.33	\$ 300.00	\$ 99.00
6/15/2020	Breck Oyama (13th Year Paralegal)	emails w/ OC and CC, efile stip dismiss and protective order	2.00	\$ 300.00	\$ 600.00
6/15/2020	Breck Oyama (13th Year Paralegal)	download protective order and email client copies	0.25	\$ 300.00	\$ 75.00
6/16/2020	Breck Oyama (13th Year Paralegal)	email client copies of protective order and stip dismiss	0.25	\$ 300.00	\$ 75.00
6/18/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call w OC re depo schedule	0.17	\$ 350.00	\$ 59.50
6/19/2020	Breck Oyama (13th Year Paralegal)	download & ocr doc prod	0.33	\$ 300.00	\$ 99.00
6/19/2020	Breck Oyama (13th Year Paralegal)	update deadline chain	0.08	\$ 300.00	\$ 24.00
6/22/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call, email to OC re depo	0.17	\$ 350.00	\$ 59.50
6/23/2020	Breck Oyama (13th Year Paralegal)	download and circulate Aviles dockets, add to service list	0.33	\$ 300.00	\$ 99.00
6/23/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Reviewed D doc production	1.33	\$ 350.00	\$ 465.50
6/23/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Reviewed D discovery responses, email to OC re m&C	0.75	\$ 350.00	\$ 262.50
6/23/2020	Lizzett Cortez (9th Year Paralegal)	Emailed client def discovery and doc production. Call w/ client re REDACTED	0.50	\$ 250.00	\$ 125.00
6/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Reviewed D's discovery responses	0.75	\$ 350.00	\$ 262.50
6/24/2020	Breck Oyama (13th Year Paralegal)	update deadline chain	0.08	\$ 300.00	\$ 24.00
6/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Emails to OC re depo	0.17	\$ 350.00	\$ 59.50
6/25/2020	Breck Oyama (13th Year Paralegal)	save docs to file	0.17	\$ 300.00	\$ 51.00
6/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	M&C with OC re discovery	0.33	\$ 350.00	\$ 115.50
6/30/2020	David Spivak (25th Year Attorney)	Review and mark up D's doc production. Email staff re missing docs	5.50	\$ 700.00	\$ 3,850.00
6/30/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call, email to OC; discussion with DGS, BO, LC re discovery	0.50	\$ 350.00	\$ 175.00
7/1/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Email OC re discovery	0.17	\$ 350.00	\$ 59.50
7/3/2020	David Spivak (25th Year Attorney)	review document production and email questions to Plaintiff	2.58	\$ 700.00	\$ 1,806.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
7/4/2020	David Spivak (25th Year Attorney)	Review EA's answers to questions on doc production and follow up questions; tasks to NG and CK	0.75	\$ 700.00	\$ 525.00
7/6/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussed m&c call with DGS, prepped agenda for call, reviewed client docs	0.75	\$ 350.00	\$ 262.50
7/7/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meeting with DGS, LC pre M&C call	0.25	\$ 350.00	\$ 87.50
7/7/2020	Breck Oyama (13th Year Paralegal)	team mtg & mtg w/ LC re discovery	0.50	\$ 300.00	\$ 150.00
7/7/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meet and confer with OC re discovery, depositions	0.92	\$ 350.00	\$ 322.00
7/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with client re REDACTED	0.42	\$ 350.00	\$ 147.00
7/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed latest data analysis, email to analyst	0.42	\$ 350.00	\$ 147.00
7/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with DGS re data analysis	0.17	\$ 350.00	\$ 59.50
7/9/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email call summary to DGS	0.25	\$ 350.00	\$ 87.50
7/10/2020	Lizzett Cortez (9th Year Paralegal)	drafted template for time records. emailed to CK. Made changes and emailed to data entry. emailed PO to data service.	0.58	\$ 250.00	\$ 145.00
7/10/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Reviewed time records, template for data entry	0.33	\$ 350.00	\$ 115.50
7/10/2020	Lizzett Cortez (9th Year Paralegal)	Messaged client re REDACT	0.08	\$ 250.00	\$ 20.00
7/16/2020	Lizzett Cortez (9th Year Paralegal)	Saved data entry time records to file.	0.08	\$ 250.00	\$ 20.00
7/17/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	followup email to OC re discovery`	0.50	\$ 350.00	\$ 175.00
7/27/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed time record analysis & LC summary of discovery	0.50	\$ 350.00	\$ 175.00
7/28/2020	Lizzett Cortez (9th Year Paralegal)	Called client witnesses and left a voicemails	0.33	\$ 250.00	\$ 82.50
7/28/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meeting with DGS & LC re discovery & time record analysis	1.00	\$ 350.00	\$ 350.00
7/28/2020	David Spivak (25th Year Attorney)	Preparation for a call with Carl and Lizzett re discovery issues: zoom call	1.50	\$ 700.00	\$ 1,050.00
7/28/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ witness and drafted and emailed authos	0.67	\$ 250.00	\$ 167.50
7/28/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ dgs and CK re time records and discovery	1.00	\$ 250.00	\$ 250.00
7/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email re discovery issues to OC	0.83	\$ 350.00	\$ 290.50
7/29/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ client re REDACTED	0.33	\$ 250.00	\$ 82.50
7/31/2020	Lizzett Cortez (9th Year Paralegal)	drafted ev pres and emailed OC w/ autho re witness	0.33	\$ 250.00	\$ 82.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
8/13/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ client re REDACTED	0.25	\$ 250.00	\$ 62.50
8/14/2020	David Spivak (25th Year Attorney)	Review was that investigative notes concerning time keeping and meal and rest. Practices; follow up with Lizzett and Carl about outstanding discovery and the Bel Air process	0.45	\$ 700.00	\$ 315.00
8/16/2020	David Spivak (25th Year Attorney)	review time records; email to Elliot and Lizzett re meal and rest	0.58	\$ 700.00	\$ 406.00
8/17/2020	Lizzett Cortez (9th Year Paralegal)	Call with Eliot re time records	0.08	\$ 250.00	\$ 20.00
8/18/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email OC re b-w, discovery	0.08	\$ 350.00	\$ 28.00
8/19/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Emails with DGS, co-counsel, OC re b-w sampling	0.42	\$ 350.00	\$ 147.00
8/20/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	redline to cmc statement; email to OC, BO, LC	0.25	\$ 350.00	\$ 87.50
8/20/2020	Lizzett Cortez (9th Year Paralegal)	emailed ck cmc statement for sig. saved signed version and emailed to OC	0.25	\$ 250.00	\$ 62.50
8/20/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email DGS, co-counsel re class list sampling	0.25	\$ 350.00	\$ 87.50
8/21/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with co-counsel; draft class list selection	0.50	\$ 350.00	\$ 175.00
8/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meeting with BO re sample selection, emails to DGS, OC re sample selection	0.58	\$ 350.00	\$ 203.00
8/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	CMC	0.67	\$ 350.00	\$ 234.50
8/27/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Email OC re outstanding discovery	0.42	\$ 350.00	\$ 147.00
8/28/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meeting with LC re discovery, depositions	0.33	\$ 350.00	\$ 115.50
8/30/2020	David Spivak (25th Year Attorney)	Review photos of entrances from OC; emails with client re REDACTED	0.33	\$ 700.00	\$ 231.00
8/31/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed data analysis of badge swipe records; call with data analyst	0.75	\$ 350.00	\$ 262.50
9/1/2020	Lizzett Cortez (9th Year Paralegal)	scheduled practice zoom call w/ client	0.17	\$ 250.00	\$ 42.50
9/10/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	review frlekin decision	0.50	\$ 350.00	\$ 175.00
9/11/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call P re REDACTED ; email DGS	0.42	\$ 350.00	\$ 147.00
10/5/2020	Breck Oyama (13th Year Paralegal)	msg w/ CJK, email TPA re follow up on sampling	0.17	\$ 300.00	\$ 51.00
10/7/2020	Breck Oyama (13th Year Paralegal)	f/u TPA re sampling project	0.08	\$ 300.00	\$ 24.00
10/7/2020	David Spivak (25th Year Attorney)	review and revise subpoena	0.50	\$ 700.00	\$ 350.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
10/13/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with DGS re site inspection, draft discovery request	0.33	\$ 350.00	\$ 115.50
10/13/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ Ayala re confirming depo dates w/ work.	0.17	\$ 250.00	\$ 42.50
10/13/2020	David Spivak (25th Year Attorney)	zoom with CJK re site inspection	0.08	\$ 700.00	\$ 56.00
10/15/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with client re REDACTED, draft demand site inspections	0.33	\$ 350.00	\$ 115.50
10/15/2020	David Spivak (25th Year Attorney)	develop anticipated deposition questions	3.67	\$ 700.00	\$ 2,569.00
10/18/2020	David Spivak (25th Year Attorney)	review site inspection request	0.25	\$ 700.00	\$ 175.00
10/19/2020	Breck Oyama (13th Year Paralegal)	msg w/ team re class list, calendar tentative mtg; review ees w/o ph#s	0.33	\$ 300.00	\$ 99.00
10/19/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call, emails with P re REDACTED, revised demand site inspections	0.58	\$ 350.00	\$ 203.00
10/19/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	emails to cc re site inspection, class list	0.17	\$ 350.00	\$ 59.50
10/19/2020	David Spivak (25th Year Attorney)	email CJK re site inspection	0.25	\$ 700.00	\$ 175.00
10/20/2020	Breck Oyama (13th Year Paralegal)	msgs w/ team re discovery/depos, email CC copies of docs	0.75	\$ 300.00	\$ 225.00
10/20/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with CC re site inspection, call list; discussion with BO	0.67	\$ 350.00	\$ 234.50
10/21/2020	Breck Oyama (13th Year Paralegal)	background check re ph#s class	0.25	\$ 300.00	\$ 75.00
10/21/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Email OC re outstanding discovery	0.33	\$ 350.00	\$ 115.50
10/21/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email DGS re call with co-counsel, revised site inspection demand	0.33	\$ 350.00	\$ 115.50
10/22/2020	Breck Oyama (13th Year Paralegal)	mtg w/ team re class list calls/procedure w/ CC	0.50	\$ 300.00	\$ 150.00
10/22/2020	Breck Oyama (13th Year Paralegal)	review file re PCM r4p, forward CK	0.17	\$ 300.00	\$ 51.00
10/22/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with BO & LC re class list calls	0.50	\$ 350.00	\$ 175.00
10/23/2020	David Spivak (25th Year Attorney)	site inspection research; call with CJK; email staff	0.33	\$ 700.00	\$ 231.00
10/23/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	rutter guide re site inspections	0.50	\$ 350.00	\$ 175.00
10/23/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ expert. emailed re protective order and emailed docs	0.33	\$ 250.00	\$ 82.50
10/26/2020	Breck Oyama (13th Year Paralegal)	review websites from DGS, mtg w/ CK re site inspection	0.50	\$ 300.00	\$ 150.00
10/26/2020	Breck Oyama (13th Year Paralegal)	msg/email team re evid pres and autho for witness calls	0.33	\$ 300.00	\$ 99.00
10/26/2020	Lizzett Cortez (9th Year Paralegal)	emailed expert re docs and saved signed protective order to file	0.17	\$ 250.00	\$ 42.50
10/27/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	emails to OC re discovery call	0.17	\$ 350.00	\$ 59.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
10/27/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with co-counsel re site inspection, class calls; email BO & LC	0.42	\$ 350.00	\$ 147.00
10/29/2020	Breck Oyama (13th Year Paralegal)	research/contact 5 videographers for site inspection project	1.00	\$ 300.00	\$ 300.00
10/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed time & badge swipe data, discussion with DGS	0.83	\$ 350.00	\$ 290.50
10/29/2020	David Spivak (25th Year Attorney)	discussion with CJK re average variance between badge swipe and start time	0.08	\$ 700.00	\$ 56.00
10/29/2020	Breck Oyama (13th Year Paralegal)	calls w/ vendors re site inspection	0.33	\$ 300.00	\$ 99.00
10/29/2020	David Spivak (25th Year Attorney)	depo prep (review of email with client and staff)	7.50	\$ 700.00	\$ 5,250.00
10/29/2020	Lizzett Cortez (9th Year Paralegal)	Call with client re [REDACTED] and emails re depo	0.25	\$ 250.00	\$ 62.50
10/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx class cert	2.17	\$ 350.00	\$ 759.50
10/29/2020	Lizzett Cortez (9th Year Paralegal)	emailed oc re depo and signed protective order for depo	0.17	\$ 250.00	\$ 42.50
10/29/2020	Breck Oyama (13th Year Paralegal)	combine D doc prod, run OCR on combined files	0.25	\$ 300.00	\$ 75.00
10/29/2020	Lizzett Cortez (9th Year Paralegal)	Called expert and left a message. messaged Ck re analysis	0.17	\$ 250.00	\$ 42.50
10/29/2020	Breck Oyama (13th Year Paralegal)	call w/ vendors re site inspection, email add'l vendor	0.33	\$ 300.00	\$ 99.00
10/30/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion w DGS re discovery, depo	0.08	\$ 350.00	\$ 28.00
10/30/2020	David Spivak (25th Year Attorney)	prep for depo prep and depo pre client	5.75	\$ 700.00	\$ 4,025.00
10/30/2020	Breck Oyama (13th Year Paralegal)	check w/ CK re R4p	0.08	\$ 300.00	\$ 24.00
10/30/2020	David Spivak (25th Year Attorney)	call with CJK re WMS and audit trial records	0.25	\$ 700.00	\$ 175.00
10/30/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed badge data; call w data analyst	0.42	\$ 350.00	\$ 147.00
10/30/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email OC discovery call recap	0.50	\$ 350.00	\$ 175.00
10/30/2020	Breck Oyama (13th Year Paralegal)	review/save site inspection estimate, forward to team	0.17	\$ 300.00	\$ 51.00
10/30/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with OC re discovery	0.42	\$ 350.00	\$ 147.00
11/2/2020	David Spivak (25th Year Attorney)	Review notes on file for last minute prep of client	2.25	\$ 700.00	\$ 1,575.00
11/2/2020	Lizzett Cortez (9th Year Paralegal)	Call with client re [REDACTED]	0.17	\$ 250.00	\$ 42.50
11/3/2020	Breck Oyama (13th Year Paralegal)	background search	0.33	\$ 300.00	\$ 99.00
11/3/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed P time and badge data, emails to DGS	1.25	\$ 350.00	\$ 437.50
11/3/2020	Lizzett Cortez (9th Year Paralegal)	background check and court search for client. messaged dgs. answered depo questions and emailed dgs satellite pics of UPS addresses.	0.75	\$ 250.00	\$ 187.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
11/3/2020	Lizzett Cortez (9th Year Paralegal)	added questions to witness chart	0.25	\$ 250.00	\$ 62.50
11/3/2020	Breck Oyama (13th Year Paralegal)	f/u email to vendor re site inspection, review messages	0.25	\$ 300.00	\$ 75.00
11/4/2020	Breck Oyama (13th Year Paralegal)	review/add expense	0.08	\$ 300.00	\$ 24.00
11/5/2020	Lizzett Cortez (9th Year Paralegal)	Call with client re REDACTED	0.17	\$ 250.00	\$ 42.50
11/5/2020	Lizzett Cortez (9th Year Paralegal)	emailed chart to CC added additional questions and emailed revised version	0.25	\$ 250.00	\$ 62.50
11/5/2020	Lizzett Cortez (9th Year Paralegal)	Called witnesses	0.50	\$ 250.00	\$ 125.00
11/5/2020	Breck Oyama (13th Year Paralegal)	check w/ LC re subpoenaed records, review emails re status	0.25	\$ 300.00	\$ 75.00
11/5/2020	Lizzett Cortez (9th Year Paralegal)	Emailed first legal re subpoena fwd message	0.17	\$ 250.00	\$ 42.50
11/6/2020	Breck Oyama (13th Year Paralegal)	calls/emails with vendors re site inspection	1.00	\$ 300.00	\$ 300.00
11/9/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with co-counsel re discovery, discussion with DGS	0.67	\$ 350.00	\$ 234.50
11/10/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with DGS re discovery	0.17	\$ 350.00	\$ 59.50
11/10/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	stip continue cert deadline	0.50	\$ 350.00	\$ 175.00
11/10/2020	David Spivak (25th Year Attorney)	call with CJK re discovery		\$ 700.00	\$ -
11/10/2020	Breck Oyama (13th Year Paralegal)	emails/review vmail from vendor re site inspection	0.08	\$ 300.00	\$ 24.00
11/10/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	followup call with co-counsel re discovery	0.42	\$ 350.00	\$ 147.00
11/11/2020	David Spivak (25th Year Attorney)	Review and revise stip continue class cert deadline	33.00	\$ 700.00	\$ 23,100.00
11/12/2020	Breck Oyama (13th Year Paralegal)	call w/ vendors re site inspection	0.25	\$ 300.00	\$ 75.00
11/13/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed depo notes; call with client re REDACTED	0.42	\$ 350.00	\$ 147.00
11/13/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	PACER search re petition coord	0.42	\$ 350.00	\$ 147.00
11/15/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	prep for call with OC; call, email OC	0.58	\$ 350.00	\$ 203.00
11/16/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with OC; email call recap	0.67	\$ 350.00	\$ 234.50
11/17/2020	Lizzett Cortez (9th Year Paralegal)	Revised depo notices and emailed to dgs for sig	0.25	\$ 250.00	\$ 62.50
11/17/2020	David Spivak (25th Year Attorney)	review and revise stip continue class cert deadline	0.33	\$ 700.00	\$ 231.00
11/17/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed and summarized privilege log, email OC	0.33	\$ 350.00	\$ 115.50
11/17/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email, call co-counsel	0.33	\$ 350.00	\$ 115.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
11/17/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	research re REDACTED, email DGS, edits and revisions to stip continue class cert	1.08	\$ 350.00	\$ 378.00
11/18/2020	Lizzett Cortez (9th Year Paralegal)	Emailed First legal subpoena req info	0.08	\$ 250.00	\$ 20.00
11/18/2020	Lizzett Cortez (9th Year Paralegal)	Saved def docs production and messaged CK re content of records	0.25	\$ 250.00	\$ 62.50
11/18/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed and summarized post orders	0.83	\$ 350.00	\$ 290.50
11/18/2020	Lizzett Cortez (9th Year Paralegal)	emailed OC depo notices	0.08	\$ 250.00	\$ 20.00
11/18/2020	Lizzett Cortez (9th Year Paralegal)	saved signed depo notices and drafted POS. Uploaded to Hello sign.	0.17	\$ 250.00	\$ 42.50
11/19/2020	Lizzett Cortez (9th Year Paralegal)	replied to BO re transcript. Saved Ayala transcript to file, calendared and emailed to client	0.25	\$ 250.00	\$ 62.50
11/19/2020	Breck Oyama (13th Year Paralegal)	research/circulate order	0.17	\$ 300.00	\$ 51.00
11/19/2020	Lizzett Cortez (9th Year Paralegal)	Emailed dgs re Initial Disclosures, drafted POS and emailed to OC	0.33	\$ 250.00	\$ 82.50
11/19/2020	Breck Oyama (13th Year Paralegal)	check w/ LC re depo transcript, update litigation chain	0.25	\$ 300.00	\$ 75.00
11/20/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion w LC re class calls; finalized stip continue cert; email OC	0.33	\$ 350.00	\$ 115.50
11/20/2020	David Spivak (25th Year Attorney)	email messages with CJK and review and revise stip re class cert date	0.33	\$ 700.00	\$ 231.00
11/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	review OC redlines to stip continue cert mx, email co-counsel	0.25	\$ 350.00	\$ 87.50
11/24/2020	David Spivak (25th Year Attorney)	Review santos v ups class cert decision	0.25	\$ 700.00	\$ 175.00
11/30/2020	Breck Oyama (13th Year Paralegal)	finalize and efile stip/order	0.50	\$ 300.00	\$ 150.00
11/30/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	finalize stip & order, emails to counsel	0.25	\$ 350.00	\$ 87.50
12/2/2020	Lizzett Cortez (9th Year Paralegal)	Emailed Amanda Protective order	0.08	\$ 250.00	\$ 20.00
12/2/2020	Breck Oyama (13th Year Paralegal)	download/review order and circulate w/ team	0.17	\$ 300.00	\$ 51.00
12/3/2020	Lizzett Cortez (9th Year Paralegal)	emailed transcript to Amanda for summary	0.08	\$ 250.00	\$ 20.00
12/3/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with dgs re mx cert gameplan	0.25	\$ 350.00	\$ 87.50
12/3/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	emails to OC re mx cert	0.17	\$ 350.00	\$ 59.50
12/4/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with co-counsel re mx cert gameplan	0.17	\$ 350.00	\$ 59.50
12/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with DGS, co-counsel re mx cert	0.42	\$ 350.00	\$ 147.00
12/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx cert	1.00	\$ 350.00	\$ 350.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
12/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with LC re depo dates	0.17	\$ 350.00	\$ 59.50
12/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call, email OC re depositions, video footage sampling	0.25	\$ 350.00	\$ 87.50
12/8/2020	Lizzett Cortez (9th Year Paralegal)	Called class list	3.00	\$ 250.00	\$ 750.00
12/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with DGS re mx cert, depositions, discovery	0.42	\$ 350.00	\$ 147.00
12/8/2020	Breck Oyama (13th Year Paralegal)	review emails re class cert, msg w/ LC	0.25	\$ 300.00	\$ 75.00
12/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with OC, co-counsel re depositions, discovery	0.50	\$ 350.00	\$ 175.00
12/9/2020	Breck Oyama (13th Year Paralegal)	msg w/ team re class cert, review judge procedures, calendar mtg re mediation	0.50	\$ 300.00	\$ 150.00
12/9/2020	Lizzett Cortez (9th Year Paralegal)	drafted robocall script, emailed dgs, recorded and submitted. Call with witnesses.	3.50	\$ 250.00	\$ 875.00
12/9/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call, email OC re depositions, discovery	0.25	\$ 350.00	\$ 87.50
12/9/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx class cert	4.67	\$ 350.00	\$ 1,634.50
12/10/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call, email OC re depositions, discovery	0.17	\$ 350.00	\$ 59.50
12/10/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	class cert mtg DGS, BO, LC	1.08	\$ 350.00	\$ 378.00
12/10/2020	Breck Oyama (13th Year Paralegal)	email mediators for availability	1.00	\$ 300.00	\$ 300.00
12/10/2020	Breck Oyama (13th Year Paralegal)	mtg re class cert, review judge orders, email mediators	1.50	\$ 300.00	\$ 450.00
12/10/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx class cert	1.83	\$ 350.00	\$ 640.50
12/10/2020	Breck Oyama (13th Year Paralegal)	mx class cert tasks	0.75	\$ 300.00	\$ 225.00
12/10/2020	Breck Oyama (13th Year Paralegal)	review mediator availability and calendar	0.25	\$ 300.00	\$ 75.00
12/10/2020	Lizzett Cortez (9th Year Paralegal)	Call with witnesses. Emailed authos	0.33	\$ 250.00	\$ 82.50
12/11/2020	Breck Oyama (13th Year Paralegal)	research class cert decisions, circulate w/ team	1.00	\$ 300.00	\$ 300.00
12/11/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	emails to OC re depositions, mediation, discovery	0.17	\$ 350.00	\$ 59.50
12/11/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx class cert	6.25	\$ 350.00	\$ 2,187.50
12/12/2020	David Spivak (25th Year Attorney)	Deposition preparation	6.17	\$ 700.00	\$ 4,319.00
12/13/2020	David Spivak (25th Year Attorney)	Deposition preparation	8.67	\$ 700.00	\$ 6,069.00
12/13/2020	David Spivak (25th Year Attorney)	Review and revise memorandum of points and authorities in support of class certification	2.08	\$ 700.00	\$ 1,456.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
12/14/2020	David Spivak (25th Year Attorney)	Deposition preparation	9.50	\$ 700.00	\$ 6,650.00
12/14/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with OC & CC re depositions, mediation; email recap to team & OC	0.83	\$ 350.00	\$ 290.50
12/14/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with potential damages expert; discussion w DGS re damages	0.50	\$ 350.00	\$ 175.00
12/14/2020	Lizzett Cortez (9th Year Paralegal)	prep exhs for depo	6.50	\$ 250.00	\$ 1,625.00
12/14/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx class cert - review redlines and drafting	1.25	\$ 350.00	\$ 437.50
12/14/2020	David Spivak (25th Year Attorney)	call with REDACTED and f/u call with Carl Kaplan re damages plan	0.42	\$ 700.00	\$ 294.00
12/14/2020	Breck Oyama (13th Year Paralegal)	research for depo prep and mx class cert	7.00	\$ 300.00	\$ 2,100.00
12/15/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call w CC re damages plan, settlement demand	0.17	\$ 350.00	\$ 59.50
12/15/2020	Lizzett Cortez (9th Year Paralegal)	prep exhs for depo	8.00	\$ 250.00	\$ 2,000.00
12/15/2020	Breck Oyama (13th Year Paralegal)	research and prep exh for depo and class cert mx	7.50	\$ 300.00	\$ 2,250.00
12/15/2020	David Spivak (25th Year Attorney)	prep for depositions and develop settlement considerations	11.33	\$ 700.00	\$ 7,931.00
12/15/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx class cert	6.75	\$ 350.00	\$ 2,362.50
12/16/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	scrub & email cert mx to co-counsel	0.25	\$ 350.00	\$ 87.50
12/16/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with co-counsel re depositions	0.17	\$ 350.00	\$ 59.50
12/16/2020	Lizzett Cortez (9th Year Paralegal)	saved depo summary to file and messaged CK. discussed rate with BO. emailed Amanda.	0.33	\$ 250.00	\$ 82.50
12/16/2020	Lizzett Cortez (9th Year Paralegal)	depo prep	2.00	\$ 250.00	\$ 500.00
12/16/2020	Lizzett Cortez (9th Year Paralegal)	drafted POS for amended notices. Served on def. Emailed Steno new notices. fixed calendar	0.75	\$ 250.00	\$ 187.50
12/16/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx class cert	2.58	\$ 350.00	\$ 903.00
12/16/2020	Lizzett Cortez (9th Year Paralegal)	Call with client re REDACTED. Emailed to client for review. emailed dgs responses. fixed chart	3.25	\$ 250.00	\$ 812.50
12/16/2020	Lizzett Cortez (9th Year Paralegal)	drafted chart	0.50	\$ 250.00	\$ 125.00
12/17/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with co-counsel re class size, depositions	0.25	\$ 350.00	\$ 87.50
12/17/2020	David Spivak (25th Year Attorney)	depo prep and class cert consideration	5.83	\$ 700.00	\$ 4,081.00
12/17/2020	Lizzett Cortez (9th Year Paralegal)	emailed chart to dgs	0.08	\$ 250.00	\$ 20.00
12/17/2020	Lizzett Cortez (9th Year Paralegal)	confirmed depositions and saved confirmations	0.17	\$ 250.00	\$ 42.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
12/17/2020	David Spivak (25th Year Attorney)	call with Jeff Petersen re REDACTED	0.42	\$ 700.00	\$ 294.00
12/17/2020	David Spivak (25th Year Attorney)	call with Dwight Steward; email	0.17	\$ 700.00	\$ 119.00
12/17/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed coates mx cert opposition brief, email dgs	0.67	\$ 350.00	\$ 234.50
12/17/2020	Breck Oyama (13th Year Paralegal)	mx class cert	7.00	\$ 300.00	\$ 2,100.00
12/17/2020	Lizzett Cortez (9th Year Paralegal)	Reviewed new docs and emailed dgs	0.33	\$ 250.00	\$ 82.50
12/18/2020	David Spivak (25th Year Attorney)	Prep for depositions and depositions of Reinhardt (security PMK)	10.50	\$ 700.00	\$ 7,350.00
12/18/2020	Breck Oyama (13th Year Paralegal)	deposition/prepare and mx class cert	9.00	\$ 300.00	\$ 2,700.00
12/18/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	PMK, percipient witness depositions	7.00	\$ 350.00	\$ 2,450.00
12/20/2020	David Spivak (25th Year Attorney)	Review mx to seal and related docs	0.75	\$ 700.00	\$ 525.00
12/20/2020	David Spivak (25th Year Attorney)	Review Steward and Petersen expert retainer agreements	0.33	\$ 700.00	\$ 231.00
12/20/2020	David Spivak (25th Year Attorney)	deposition prep	2.00	\$ 700.00	\$ 1,400.00
12/21/2020	Breck Oyama (13th Year Paralegal)	call/email expert	0.50	\$ 300.00	\$ 150.00
12/21/2020	Breck Oyama (13th Year Paralegal)	mx class cert/exhibits	3.00	\$ 300.00	\$ 900.00
12/21/2020	David Spivak (25th Year Attorney)	deposition prep and deposition HR PMK; follow up with CJK re class cert excerpts from deposition	7.50	\$ 700.00	\$ 5,250.00
12/21/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx class cert	1.00	\$ 350.00	\$ 350.00
12/21/2020	Breck Oyama (13th Year Paralegal)	mx class cert	2.00	\$ 300.00	\$ 600.00
12/21/2020	Breck Oyama (13th Year Paralegal)	mx class cert decl DGS	2.00	\$ 300.00	\$ 600.00
12/21/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	HR PMK deposition; discussion with DGS re class cert mx	6.50	\$ 350.00	\$ 2,275.00
12/21/2020	Breck Oyama (13th Year Paralegal)	deposition prep	1.75	\$ 300.00	\$ 525.00
12/22/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Operations PMK deposition	2.50	\$ 350.00	\$ 875.00
12/22/2020	Lizzett Cortez (9th Year Paralegal)	worked on pl decl re cert	0.50	\$ 250.00	\$ 125.00
12/22/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Percipient witness deposition	3.00	\$ 350.00	\$ 1,050.00
12/22/2020	David Spivak (25th Year Attorney)	reviewed trial plans, peterson decl	0.67	\$ 700.00	\$ 469.00
12/22/2020	David Spivak (25th Year Attorney)	Deposition prep	2.00	\$ 700.00	\$ 1,400.00
12/22/2020	Breck Oyama (13th Year Paralegal)	mx class cert, calls/emails with experts, emails with OC re mediation	8.00	\$ 300.00	\$ 2,400.00
12/22/2020	Lizzett Cortez (9th Year Paralegal)	reviewed docs re meals. messaged and texted dgs.	0.42	\$ 250.00	\$ 105.00
12/23/2020	Breck Oyama (13th Year Paralegal)	mx class cert; upload videos	5.00	\$ 300.00	\$ 1,500.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
12/23/2020	Lizzett Cortez (9th Year Paralegal)	Saved depo transcripts, uploaded on hightail, and emailed Amanda for summary	0.47	\$ 250.00	\$ 117.50
12/23/2020	David Spivak (25th Year Attorney)	Call with cocounsel and Petersen re REDACTED	0.75	\$ 700.00	\$ 525.00
12/24/2020	Breck Oyama (13th Year Paralegal)	upload videos	1.00	\$ 300.00	\$ 300.00
12/27/2020	David Spivak (25th Year Attorney)	review and revise MPA ver 2	1.83	\$ 700.00	\$ 1,281.00
12/28/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	review coates, sephora trial plans	0.58	\$ 350.00	\$ 203.00
12/28/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	review redlines to mx class cert; draft mx class cert	4.83	\$ 350.00	\$ 1,690.50
12/28/2020	Breck Oyama (13th Year Paralegal)	mx class cert; coordinate video copies to experts and OC	5.00	\$ 300.00	\$ 1,500.00
12/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	review depo transcripts, mx class cert	3.75	\$ 350.00	\$ 1,312.50
12/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with DGS re trial plan, mediation	0.83	\$ 350.00	\$ 290.50
12/29/2020	Breck Oyama (13th Year Paralegal)	call w/ expert office re scheduling conf call	0.25	\$ 300.00	\$ 75.00
12/29/2020	David Spivak (25th Year Attorney)	call with CJK re trial plan	0.25	\$ 700.00	\$ 175.00
12/29/2020	Breck Oyama (13th Year Paralegal)	mx class cert; calls w/ expert and emails w/ OC	5.00	\$ 300.00	\$ 1,500.00
12/30/2020	Lizzett Cortez (9th Year Paralegal)	Class cert exes and Ayala decl. Call with Client re REDACTED	3.50	\$ 250.00	\$ 875.00
12/30/2020	Breck Oyama (13th Year Paralegal)	mx class cert; calls w/ expert	6.50	\$ 300.00	\$ 1,950.00
12/30/2020	Lizzett Cortez (9th Year Paralegal)	saved depo summary and emailed AK and CK	0.17	\$ 250.00	\$ 42.50
12/30/2020	Lizzett Cortez (9th Year Paralegal)	Emailed First Records re CNR	0.08	\$ 250.00	\$ 20.00
12/31/2020	Lizzett Cortez (9th Year Paralegal)	emailed CK re depo excepts	0.17	\$ 250.00	\$ 42.50
12/31/2020	Lizzett Cortez (9th Year Paralegal)	Saved and paid Kline summary invoice	0.08	\$ 250.00	\$ 20.00
12/31/2020	Lizzett Cortez (9th Year Paralegal)	emailed expert list of witnesses	0.17	\$ 250.00	\$ 42.50
12/31/2020	Lizzett Cortez (9th Year Paralegal)	call with witnesses and sent autho	1.50	\$ 250.00	\$ 375.00
12/31/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx class cert	5.75	\$ 350.00	\$ 2,012.50
1/3/2021	David Spivak (25th Year Attorney)	prep for mediation	2.00	\$ 700.00	\$ 1,400.00
1/4/2021	David Spivak (25th Year Attorney)	prep for mediation and mediation	10.50	\$ 700.00	\$ 7,350.00
1/4/2021	Breck Oyama (13th Year Paralegal)	review videos and circulate w/ team and CC	4.17	\$ 300.00	\$ 1,251.00
1/4/2021	Breck Oyama (13th Year Paralegal)	review/prep fees and costs projections for mediation	2.00	\$ 300.00	\$ 600.00
1/4/2021	Lizzett Cortez (9th Year Paralegal)	Mediation	7.50	\$ 250.00	\$ 1,875.00
1/4/2021	David Spivak (25th Year Attorney)	call with Dr. Petersen; notes to staff	0.67	\$ 700.00	\$ 469.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
1/4/2021	Breck Oyama (13th Year Paralegal)	research lawsuits for mediation	2.67	\$ 300.00	\$ 801.00
1/4/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mediation	7.00	\$ 350.00	\$ 2,450.00
1/5/2021	David Spivak (25th Year Attorney)	f/u call with staff re trial plan	0.33	\$ 700.00	\$ 231.00
1/5/2021	Lizzett Cortez (9th Year Paralegal)	Called dr. Peterson left voicemail	0.08	\$ 250.00	\$ 20.00
1/5/2021	Breck Oyama (13th Year Paralegal)	mx class cert	4.08	\$ 300.00	\$ 1,224.00
1/5/2021	Breck Oyama (13th Year Paralegal)	mtgs w/ team re class cert	1.50	\$ 300.00	\$ 450.00
1/5/2021	Lizzett Cortez (9th Year Paralegal)	emailed experts REDACTED	0.25	\$ 250.00	\$ 62.50
1/5/2021	Lizzett Cortez (9th Year Paralegal)	call with dgs, dr steward, ck re class cert	1.25	\$ 250.00	\$ 312.50
1/5/2021	Lizzett Cortez (9th Year Paralegal)	mtgs w/ team re class cert	1.50	\$ 250.00	\$ 375.00
1/5/2021	David Spivak (25th Year Attorney)	call with team and dr. steward	0.67	\$ 700.00	\$ 469.00
1/5/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mx class cert; revisions, citations	7.50	\$ 350.00	\$ 2,625.00
1/5/2021	Lizzett Cortez (9th Year Paralegal)	emailed dgs ayala decl	0.08	\$ 250.00	\$ 20.00
1/6/2021	Lizzett Cortez (9th Year Paralegal)	Call w/ Ayala and Dr. Peterson	0.33	\$ 250.00	\$ 82.50
1/6/2021	Breck Oyama (13th Year Paralegal)	review seal procedures, update application seal	2.00	\$ 300.00	\$ 600.00
1/6/2021	Breck Oyama (13th Year Paralegal)	review MPA, revise DGS decl	2.50	\$ 300.00	\$ 750.00
1/6/2021	Breck Oyama (13th Year Paralegal)	review exs w/ team, finalize M&C email re confidential exs	1.00	\$ 300.00	\$ 300.00
1/6/2021	Breck Oyama (13th Year Paralegal)	draft RJN for mx class cert	1.33	\$ 300.00	\$ 399.00
1/6/2021	Lizzett Cortez (9th Year Paralegal)	call with CK and dgs re decl. fixed decl and emailed to cc	0.50	\$ 250.00	\$ 125.00
1/6/2021	David Spivak (25th Year Attorney)	Review and revise Ayala class cert adequacy decl	0.75	\$ 700.00	\$ 525.00
1/6/2021	Breck Oyama (13th Year Paralegal)	finalize/scrub and email CC draft app seal	0.50	\$ 300.00	\$ 150.00
1/6/2021	David Spivak (25th Year Attorney)	review and revise RJN; review M&C for LR 7.3	0.50	\$ 700.00	\$ 350.00
1/6/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	trial plan; m&c email to OC	7.67	\$ 350.00	\$ 2,684.50
1/6/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	draft m&c letter re LR 7-3; email dgs; email OC	0.50	\$ 350.00	\$ 175.00
1/6/2021	David Spivak (25th Year Attorney)	call with CJK re trial plan	0.25	\$ 700.00	\$ 175.00
1/6/2021	Lizzett Cortez (9th Year Paralegal)	Call w/ client re REDAC	0.33	\$ 250.00	\$ 82.50
1/6/2021	Lizzett Cortez (9th Year Paralegal)	call w/tori and Aviles re scheduling call with expert	0.17	\$ 250.00	\$ 42.50
1/6/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed draft report re: results of mediation; email DGS	0.17	\$ 350.00	\$ 59.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
1/7/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	emails with OC re m&c email	0.25	\$ 350.00	\$ 87.50
1/7/2021	Breck Oyama (13th Year Paralegal)	review trial plan re exhibits, call w/ DGS re depo cites	2.00	\$ 300.00	\$ 600.00
1/7/2021	Lizzett Cortez (9th Year Paralegal)	emailed locations to expert and depo excerpts to dr peterson	0.42	\$ 250.00	\$ 105.00
1/7/2021	Breck Oyama (13th Year Paralegal)	review/redact exhibits for mx class cert	2.00	\$ 300.00	\$ 600.00
1/7/2021	Breck Oyama (13th Year Paralegal)	review procedures and prep filing list, prep M&C list for mtg w/ OC	1.75	\$ 300.00	\$ 525.00
1/7/2021	Breck Oyama (13th Year Paralegal)	finalize and email OC app seal, email w/ CC re JSR, research and update RJN for class cert	3.00	\$ 300.00	\$ 900.00
1/7/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	draft trial plan	6.25	\$ 350.00	\$ 2,187.50
1/7/2021	Breck Oyama (13th Year Paralegal)	review/update briefing schedule re class cert, email team re hearing dates and calendar, review coates	0.75	\$ 300.00	\$ 225.00
1/8/2021	David Spivak (25th Year Attorney)	call with Richard Donohoe	0.25	\$ 700.00	\$ 175.00
1/8/2021	Breck Oyama (13th Year Paralegal)	mtg w/ OC, revise stip, circulate	0.75	\$ 300.00	\$ 225.00
1/8/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	m&c w/ OC re cert mx	0.50	\$ 350.00	\$ 175.00
1/8/2021	Breck Oyama (13th Year Paralegal)	mx class cert, mtg w/ team, M&C call w/ OC, revise app seal	5.00	\$ 300.00	\$ 1,500.00
1/8/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with CC re decl	0.17	\$ 350.00	\$ 59.50
1/8/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	revisions to MPA, decl spivak	7.42	\$ 350.00	\$ 2,597.00
1/8/2021	Breck Oyama (13th Year Paralegal)	mx class cert, mtg w/ CK re exhibits	1.00	\$ 300.00	\$ 300.00
1/8/2021	David Spivak (25th Year Attorney)	call with Jeff Petersen	1.08	\$ 700.00	\$ 756.00
1/9/2021	Breck Oyama (13th Year Paralegal)	emails w/ expert, emails w/ OC, review/revise trial plan TOA	1.50	\$ 300.00	\$ 450.00
1/9/2021	David Spivak (25th Year Attorney)	call with Richard Donohoe re retention	0.42	\$ 700.00	\$ 294.00
1/10/2021	David Spivak (25th Year Attorney)	review and revise ayala decl	0.50	\$ 700.00	\$ 350.00
1/10/2021	David Spivak (25th Year Attorney)	review and revise trial plan	3.50	\$ 700.00	\$ 2,450.00
1/11/2021	Lizzett Cortez (9th Year Paralegal)	mx class cert	7.50	\$ 250.00	\$ 1,875.00
1/11/2021	David Spivak (25th Year Attorney)	call with Donohoe re CV and opinion format	0.17	\$ 700.00	\$ 119.00
1/11/2021	Breck Oyama (13th Year Paralegal)	review/revise MPA	2.00	\$ 300.00	\$ 600.00
1/11/2021	Breck Oyama (13th Year Paralegal)	calls/emails w/ expert re REDACTED	0.67	\$ 300.00	\$ 201.00
1/11/2021	David Spivak (25th Year Attorney)	review comments on Petersen decl	0.67	\$ 700.00	\$ 469.00
1/11/2021	Breck Oyama (13th Year Paralegal)	cross check MPA w/ decl and exh cites	2.00	\$ 300.00	\$ 600.00
1/11/2021	Breck Oyama (13th Year Paralegal)	finalize/file stip re filing mx class cert	0.33	\$ 300.00	\$ 99.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
1/11/2021	David Spivak (25th Year Attorney)	call with Petersen	0.33	\$ 700.00	\$ 231.00
1/11/2021	Breck Oyama (13th Year Paralegal)	calls w/ experts, update/revise trial plan TOA	3.00	\$ 300.00	\$ 900.00
1/12/2021	David Spivak (25th Year Attorney)	call with susie and carl at Dwight Steward's office	0.50	\$ 700.00	\$ 350.00
1/12/2021	Breck Oyama (13th Year Paralegal)	redact/bates label ex for mx class cert	2.00	\$ 300.00	\$ 600.00
1/12/2021	Maya Cheaitani (1st Year Attorney)	review changes to Ayala decl	0.25	\$ 250.00	\$ 62.50
1/12/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed/revise depo cites	1.00	\$ 350.00	\$ 350.00
1/12/2021	David Spivak (25th Year Attorney)	call with Steward	0.08	\$ 700.00	\$ 56.00
1/12/2021	Lizzett Cortez (9th Year Paralegal)	Calls with experts, mtg with dgs. Class cert. mtg with BO and CK. call with client	7.00	\$ 250.00	\$ 1,750.00
1/12/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	trial plan	5.25	\$ 350.00	\$ 1,837.50
1/12/2021	David Spivak (25th Year Attorney)	call with Donohoe	0.25	\$ 700.00	\$ 175.00
1/12/2021	David Spivak (25th Year Attorney)	call with LC re status of Ayala class cert filing	0.08	\$ 700.00	\$ 56.00
1/12/2021	Breck Oyama (13th Year Paralegal)	mx class cert	8.00	\$ 300.00	\$ 2,400.00
1/13/2021	Lizzett Cortez (9th Year Paralegal)	Called clerk and left a message re stip to delay ruling.	0.08	\$ 250.00	\$ 20.00
1/13/2021	Breck Oyama (13th Year Paralegal)	mx class cert, mtgs w/ team	4.75	\$ 300.00	\$ 1,425.00
1/13/2021	Breck Oyama (13th Year Paralegal)	mx class cert	8.25	\$ 300.00	\$ 2,475.00
1/13/2021	Lizzett Cortez (9th Year Paralegal)	Called susie left message re Dr. Steward's availability	0.08	\$ 250.00	\$ 20.00
1/13/2021	Lizzett Cortez (9th Year Paralegal)	Class cert	8.00	\$ 250.00	\$ 2,000.00
1/13/2021	Lizzett Cortez (9th Year Paralegal)	mtg with BO re Class cert tasks	0.33	\$ 250.00	\$ 82.50
1/13/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	MPA, decl spivak; trial plan revisions; reviewed additional caselaw re representative evidence	6.92	\$ 350.00	\$ 2,422.00
1/13/2021	Lizzett Cortez (9th Year Paralegal)	Call with susie re filing and steward decl	0.08	\$ 250.00	\$ 20.00
1/13/2021	Lizzett Cortez (9th Year Paralegal)	additional additional excerpt to exhs	0.50	\$ 250.00	\$ 125.00
1/13/2021	David Spivak (25th Year Attorney)	call with staff re deadline and final tasks for class cert briefing	0.25	\$ 700.00	\$ 175.00
1/13/2021	David Spivak (25th Year Attorney)	call with donohoe	1.00	\$ 700.00	\$ 700.00
1/13/2021	Lizzett Cortez (9th Year Paralegal)	saved CK depo excerpts revisions	0.08	\$ 250.00	\$ 20.00
1/13/2021	David Spivak (25th Year Attorney)	review EA decl.	0.33	\$ 700.00	\$ 231.00
1/13/2021	David Spivak (25th Year Attorney)	call with EmployStats and cocounsel	1.08	\$ 700.00	\$ 756.00
1/13/2021	Lizzett Cortez (9th Year Paralegal)	replied to dgs email and messaged client re REDACTED	0.17	\$ 250.00	\$ 42.50
1/13/2021	David Spivak (25th Year Attorney)	review and revise trial plan	1.00	\$ 700.00	\$ 700.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
1/13/2021	Lizzett Cortez (9th Year Paralegal)	saved order re stip to delay filing	0.08	\$ 250.00	\$ 20.00
1/14/2021	Lizzett Cortez (9th Year Paralegal)	Class cert	10.00	\$ 250.00	\$ 2,500.00
1/14/2021	Breck Oyama (13th Year Paralegal)	finalize/file mx class cert	11.00	\$ 300.00	\$ 3,300.00
1/14/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	class cert - document finalization & redaction	8.50	\$ 350.00	\$ 2,975.00
1/15/2021	Breck Oyama (13th Year Paralegal)	prep manual filing for delivery to court	1.00	\$ 300.00	\$ 300.00
1/15/2021	David Spivak (25th Year Attorney)	call with co-counsel re site inspection and depo Aviles client	0.50	\$ 700.00	\$ 350.00
1/19/2021	Breck Oyama (13th Year Paralegal)	update caption pages, review order, file docs under seal/redacted per order	2.50	\$ 300.00	\$ 750.00
1/20/2021	Breck Oyama (13th Year Paralegal)	email experts links for class cert briefing	0.50	\$ 300.00	\$ 150.00
1/25/2021	Lizzett Cortez (9th Year Paralegal)	emailed tori re depositions	0.08	\$ 250.00	\$ 20.00
1/27/2021	David Spivak (25th Year Attorney)	review site inspection requests	0.50	\$ 700.00	\$ 350.00
1/28/2021	Lizzett Cortez (9th Year Paralegal)	Emailed experts W9 and emailed re checks. saved links to depo and calendared	0.67	\$ 250.00	\$ 167.50
1/28/2021	Lizzett Cortez (9th Year Paralegal)	Called two witnesses and sent authos. saved signed authos to file	0.67	\$ 250.00	\$ 167.50
1/29/2021	Lizzett Cortez (9th Year Paralegal)	drafted witnesses ev pres lts. saved to file. drafted r4p set 2 emailed to dgs	1.50	\$ 250.00	\$ 375.00
2/4/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed & revised objection to depo notice	0.42	\$ 350.00	\$ 147.00
2/9/2021	Lizzett Cortez (9th Year Paralegal)	drafted r4p set 3 re BAM witnesses. emailed to dgs for sig	0.67	\$ 250.00	\$ 167.50
2/10/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email OC re pcm contact list, video footage requests	0.17	\$ 350.00	\$ 59.50
2/10/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with co-counsel re: depo recap; email team	0.25	\$ 350.00	\$ 87.50
2/10/2021	Lizzett Cortez (9th Year Paralegal)	drafted POS and served r4p set 3	0.33	\$ 250.00	\$ 82.50
2/10/2021	Lizzett Cortez (9th Year Paralegal)	Emailed Harmany re CNR	0.08	\$ 250.00	\$ 20.00
2/10/2021	Lizzett Cortez (9th Year Paralegal)	reviewed charts re dgs questions. reviewed expert decl. Emailed BAM re class members. Emailed dgs responses	0.75	\$ 250.00	\$ 187.50
2/11/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email OC re ev pres letter dispute	0.17	\$ 350.00	\$ 59.50
2/16/2021	Breck Oyama (13th Year Paralegal)	mtg re site inspections and subpoenas	0.33	\$ 300.00	\$ 99.00
2/16/2021	Lizzett Cortez (9th Year Paralegal)	MTG w/ DGS, CK and BO re site inspection and subpoenas	0.33	\$ 250.00	\$ 82.50
2/16/2021	Lizzett Cortez (9th Year Paralegal)	drafted cover lts, mailed witness fees checks to expert, and emailed	0.75	\$ 250.00	\$ 187.50
2/16/2021	David Spivak (25th Year Attorney)	Review and revise discovery requests prepared by the coplaintiff	0.33	\$ 700.00	\$ 231.00
2/16/2021	Lizzett Cortez (9th Year Paralegal)	calendared call with CK and Brown and email dial-in number	0.17	\$ 250.00	\$ 42.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
2/16/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meeting w team re site inspections & video records	0.33	\$ 350.00	\$ 115.50
2/17/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	M&C call with OC re class list	0.25	\$ 350.00	\$ 87.50
2/17/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with co-counsel re m&c call, reply brief	0.25	\$ 350.00	\$ 87.50
2/19/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email OC re class list	0.08	\$ 350.00	\$ 28.00
2/22/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Review judge, magistrate judge orders re [REDACTED]; email DGS	0.75	\$ 350.00	\$ 262.50
2/22/2021	David Spivak (25th Year Attorney)	Review OC email re class list; email task to CJK	0.08	\$ 700.00	\$ 56.00
2/25/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	LR 37 stip	1.42	\$ 350.00	\$ 497.00
2/26/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	draft LR37 stip	2.50	\$ 350.00	\$ 875.00
2/26/2021	David Spivak (25th Year Attorney)	Review [REDACTED] call with Mr. Donohoe	0.75	\$ 700.00	\$ 525.00
3/1/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	research re [REDACTED]; draft notice	1.58	\$ 350.00	\$ 553.00
3/1/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	LR 37 stip	1.83	\$ 350.00	\$ 640.50
3/2/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	LR 37 stip	2.83	\$ 350.00	\$ 990.50
3/2/2021	David Spivak (25th Year Attorney)	Review Donohoe [REDACTED]	1.17	\$ 700.00	\$ 819.00
3/2/2021	Breck Oyama (13th Year Paralegal)	finalize and efile notice authority	0.50	\$ 300.00	\$ 150.00
3/3/2021	David Spivak (25th Year Attorney)	review and revise stip mx compel class list	1.50	\$ 700.00	\$ 1,050.00
3/4/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	edits and revisions to LR 37 stip; decl Kaplan; draft notice	2.25	\$ 350.00	\$ 787.50
3/4/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	research re [REDACTED]; email team	1.00	\$ 350.00	\$ 350.00
3/5/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meeting w BO & LC re LR37 stip	0.25	\$ 350.00	\$ 87.50
3/5/2021	Breck Oyama (13th Year Paralegal)	mtg w/ CK, assemble exhibits for discovery stip	0.83	\$ 300.00	\$ 249.00
3/5/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	further revisions to LR37 stip & decl	0.58	\$ 350.00	\$ 203.00
3/5/2021	Lizzett Cortez (9th Year Paralegal)	emailed dgs re r4p 2 responses	0.08	\$ 250.00	\$ 20.00
3/5/2021	Lizzett Cortez (9th Year Paralegal)	mtg w/ ck and bo. Assembled depo exhs. Combined all exhs and OCRd.	1.00	\$ 250.00	\$ 250.00
3/8/2021	Lizzett Cortez (9th Year Paralegal)	Revised resps r4p set 2, drafted pos, emailed dgs for sig. served on OC	0.75	\$ 250.00	\$ 187.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
3/8/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	finalized LR 37 stip; email OC & CC	0.33	\$ 350.00	\$ 115.50
3/12/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed expert depositions/declarations re REDACTED	0.50	\$ 350.00	\$ 175.00
3/12/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	M&C call w OC re mx exclude experts; emails to team	0.42	\$ 350.00	\$ 147.00
3/15/2021	David Spivak (25th Year Attorney)	legal research REDACTED	2.50	\$ 700.00	\$ 1,750.00
3/15/2021	Lizzett Cortez (9th Year Paralegal)	saved and reviewed def discovery resps. Emailed dgs .	1.00	\$ 250.00	\$ 250.00
3/15/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Finalized LR 37 stip, email BO & LC re LR 37 stip	0.58	\$ 350.00	\$ 203.00
3/16/2021	Breck Oyama (13th Year Paralegal)	finalize and efile discovery mx, email w/ OC re ECF issue	1.00	\$ 300.00	\$ 300.00
3/16/2021	Breck Oyama (13th Year Paralegal)	review videos and msgs w/ LC/DGS, review magistrate procedures	1.00	\$ 300.00	\$ 300.00
3/16/2021	David Spivak (25th Year Attorney)	Prepare a supplemental briefing in support of motion to compel production of class contact information	6.42	\$ 700.00	\$ 4,494.00
3/16/2021	Lizzett Cortez (9th Year Paralegal)	saved def opp and ocr. Combined and OCR docs. emailed dgs.	0.58	\$ 250.00	\$ 145.00
3/16/2021	Breck Oyama (13th Year Paralegal)	prep TOC for discovery stip, emails w/ OC, assemble mx for filing	1.50	\$ 300.00	\$ 450.00
3/16/2021	Lizzett Cortez (9th Year Paralegal)	reviewed docs. messaged dgs reps to questions	2.00	\$ 250.00	\$ 500.00
3/16/2021	Breck Oyama (13th Year Paralegal)	review/fwd opp briefing to FV	0.33	\$ 300.00	\$ 99.00
3/16/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email co-counsel re discovery dispute	0.17	\$ 350.00	\$ 59.50
3/17/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	research re REDACTED	0.67	\$ 350.00	\$ 234.50
3/17/2021	David Spivak (25th Year Attorney)	review opp mx for class cert; emails to CC	2.67	\$ 700.00	\$ 1,869.00
3/17/2021	Breck Oyama (13th Year Paralegal)	save conformed copies of mx, email client	0.25	\$ 300.00	\$ 75.00
3/19/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	draft, revise supp memo iso LR 37 stip	0.58	\$ 350.00	\$ 203.00
3/19/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with co-counsel re discovery dispute	0.33	\$ 350.00	\$ 115.50
3/21/2021	David Spivak (25th Year Attorney)	Review opposition to class certification briefing, redline PDFs of same	6.50	\$ 700.00	\$ 4,550.00
3/22/2021	David Spivak (25th Year Attorney)	call with BAM re reply briefing points	0.50	\$ 700.00	\$ 350.00
3/22/2021	Breck Oyama (13th Year Paralegal)	download/circulate orders/decisions	0.25	\$ 300.00	\$ 75.00
3/22/2021	David Spivak (25th Year Attorney)	Review class certification opposition and mark up for cocounsel	3.33	\$ 700.00	\$ 2,331.00
3/24/2021	David Spivak (25th Year Attorney)	Review Judge Gutierrez decisions REDACTED; email summary to cocounsel	1.08	\$ 700.00	\$ 756.00
3/29/2021	Lizzett Cortez (9th Year Paralegal)	saved depo summary and entered invoice	0.17	\$ 250.00	\$ 42.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
3/30/2021	Breck Oyama (13th Year Paralegal)	prep notice withdrawal re CK	0.25	\$ 300.00	\$ 75.00
3/31/2021	David Spivak (25th Year Attorney)	call with OC re settlement	0.08	\$ 700.00	\$ 56.00
4/1/2021	Breck Oyama (13th Year Paralegal)	efile withdrawal re CK	0.17	\$ 300.00	\$ 51.00
4/7/2021	Lizzett Cortez (9th Year Paralegal)	saved depo summary, emailed Amanda and BO	0.17	\$ 250.00	\$ 42.50
4/9/2021	David Spivak (25th Year Attorney)	avoid the brief prep	0.75	\$ 700.00	\$ 525.00
4/9/2021	David Spivak (25th Year Attorney)	review and revise reply MPA class cert mx	2.08	\$ 700.00	\$ 1,456.00
4/11/2021	David Spivak (25th Year Attorney)	review opp mx exclude experts; legal research	1.50	\$ 700.00	\$ 1,050.00
4/12/2021	David Spivak (25th Year Attorney)	review and revise opposition to motion to exclude Experts	1.83	\$ 700.00	\$ 1,281.00
4/12/2021	Breck Oyama (13th Year Paralegal)	save docs to file, email docs to CC for opp	0.33	\$ 300.00	\$ 99.00
4/12/2021	Breck Oyama (13th Year Paralegal)	save/email client copies of opp mx exclude expert decls	0.33	\$ 300.00	\$ 99.00
4/14/2021	Breck Oyama (13th Year Paralegal)	review mediation brief, assemble exhibits	0.75	\$ 300.00	\$ 225.00
4/14/2021	Breck Oyama (13th Year Paralegal)	emails w/ Dawnyel and mediator re status of mediation payment	0.17	\$ 300.00	\$ 51.00
4/14/2021	Breck Oyama (13th Year Paralegal)	review mx fees and finalize for filing	1.08	\$ 300.00	\$ 324.00
4/14/2021	Breck Oyama (13th Year Paralegal)	call w/ TPA re update on sample selection, emails w/ team and OC	0.25	\$ 300.00	\$ 75.00
4/14/2021	Breck Oyama (13th Year Paralegal)	save/circulate reply briefing and copies of opp briefing to client	0.33	\$ 300.00	\$ 99.00
4/14/2021	Breck Oyama (13th Year Paralegal)	finalize brief and assemble w/ exhibits, email CC for approval	0.50	\$ 300.00	\$ 150.00
4/20/2021	Breck Oyama (13th Year Paralegal)	update calendar and deadline chain	0.17	\$ 300.00	\$ 51.00
4/20/2021	Lizzett Cortez (9th Year Paralegal)	emailed Amnda re summary. Saved summary to file.	0.17	\$ 250.00	\$ 42.50
4/22/2021	David Spivak (25th Year Attorney)	prep for mediation	1.50	\$ 700.00	\$ 1,050.00
4/23/2021	Breck Oyama (13th Year Paralegal)	research competing cases	0.50	\$ 300.00	\$ 150.00
4/23/2021	Breck Oyama (13th Year Paralegal)	mediation, review fees/costs, research	2.25	\$ 300.00	\$ 675.00
4/26/2021	David Spivak (25th Year Attorney)	review notice of settlement	0.25	\$ 700.00	\$ 175.00
4/26/2021	David Spivak (25th Year Attorney)	call with client	0.08	\$ 700.00	\$ 56.00
5/10/2021	David Spivak (25th Year Attorney)	prep for status conf and status conf.	0.33	\$ 700.00	\$ 231.00
5/24/2021	Michelle Grimberg (Formerly Employed 20+ Year Attorney)	Review and analyze revisions to settlement agreement.	0.17	\$ 650.00	\$ 110.50
5/24/2021	David Spivak (25th Year Attorney)	Review and revise settlement agreement	2.00	\$ 700.00	\$ 1,400.00
5/26/2021	Breck Oyama (13th Year Paralegal)	review/revise agreement and email CC, emails w/ TPAs and research, emails w/ JS re invoice	1.25	\$ 300.00	\$ 375.00
6/8/2021	David Spivak (25th Year Attorney)	Review OC changes to settlement agreement; email cocounsel comments	1.58	\$ 700.00	\$ 1,106.00
6/8/2021	David Spivak (25th Year Attorney)	review UPS decision re pay stubs and docket	0.50	\$ 700.00	\$ 350.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
6/21/2021	Lizzett Cortez (9th Year Paralegal)	reviewed emails	0.08	\$ 250.00	\$ 20.00
6/22/2021	Breck Oyama (13th Year Paralegal)	draft decl dgs ISO mx prelim	2.00	\$ 300.00	\$ 600.00
6/22/2021	Breck Oyama (13th Year Paralegal)	save drafts/docs to file re settlement and mx	0.25	\$ 300.00	\$ 75.00
6/22/2021	Lizzett Cortez (9th Year Paralegal)	reviewed emails	0.08	\$ 250.00	\$ 20.00
6/23/2021	David Spivak (25th Year Attorney)	Review settlement agreement	0.25	\$ 700.00	\$ 175.00
6/23/2021	David Spivak (25th Year Attorney)	review class notice and dispute form; revise	0.50	\$ 700.00	\$ 350.00
6/23/2021	Breck Oyama (13th Year Paralegal)	f/u DGS re mx and notice, email CC re hearing and calendar, email client agmt for signatures	0.50	\$ 300.00	\$ 150.00
6/23/2021	Breck Oyama (13th Year Paralegal)	check competing case status, email DGS	0.17	\$ 300.00	\$ 51.00
6/23/2021	Breck Oyama (13th Year Paralegal)	review emails/save DGS redline	0.08	\$ 300.00	\$ 24.00
6/23/2021	David Spivak (25th Year Attorney)	review and revise MPA for prelim approval	2.58	\$ 700.00	\$ 1,806.00
6/23/2021	Breck Oyama (13th Year Paralegal)	save DGS rev to notice/form	0.17	\$ 300.00	\$ 51.00
6/23/2021	Breck Oyama (13th Year Paralegal)	finalize/email DGS decl ISO mx prelim, assemble agmt and email CC	1.00	\$ 300.00	\$ 300.00
6/24/2021	Breck Oyama (13th Year Paralegal)	save settlement docs, email decl and cases to CC for mx prelim	0.33	\$ 300.00	\$ 99.00
6/24/2021	Breck Oyama (13th Year Paralegal)	emails w/ DGS re Donohoe	0.08	\$ 300.00	\$ 24.00
6/24/2021	Breck Oyama (13th Year Paralegal)	review FV feed	0.08	\$ 300.00	\$ 24.00
6/24/2021	Lizzett Cortez (9th Year Paralegal)	Reviewed Ayala filevine feed	0.08	\$ 250.00	\$ 20.00
6/24/2021	David Spivak (25th Year Attorney)	review and revise prelim Approval mx decl. DGS	2.00	\$ 700.00	\$ 1,400.00
6/24/2021	Breck Oyama (13th Year Paralegal)	save/review expert invoice	0.33	\$ 300.00	\$ 99.00
6/24/2021	Breck Oyama (13th Year Paralegal)	review/revise DGS decl	0.33	\$ 300.00	\$ 99.00
6/24/2021	Breck Oyama (13th Year Paralegal)	calendar REDACTED deadline and email docs to CC	0.17	\$ 300.00	\$ 51.00
6/24/2021	Lizzett Cortez (9th Year Paralegal)	read emails	0.17	\$ 250.00	\$ 42.50
6/25/2021	David Spivak (25th Year Attorney)	review settlement and stip to continue	0.92	\$ 700.00	\$ 644.00
6/25/2021	Breck Oyama (13th Year Paralegal)	review email/FV feed, email client copies of stip	0.25	\$ 300.00	\$ 75.00
6/25/2021	Lizzett Cortez (9th Year Paralegal)	Reviewed emails and feed	0.17	\$ 250.00	\$ 42.50
6/25/2021	Breck Oyama (13th Year Paralegal)	save/review stip continue	0.08	\$ 300.00	\$ 24.00
6/25/2021	Breck Oyama (13th Year Paralegal)	review emails w/ OC/CC, emails w/ expert re REDACTED	0.25	\$ 300.00	\$ 75.00
6/29/2021	Breck Oyama (13th Year Paralegal)	review emails, save OC revisions MPA, f/u CC re dgs decl	0.17	\$ 300.00	\$ 51.00
6/30/2021	Breck Oyama (13th Year Paralegal)	review/save email, adjust billing, email DB, save/review court order	0.17	\$ 300.00	\$ 51.00
6/30/2021	Jessica Bencomo (1st Year Legal Secretary)	reviewed emails	0.08	\$ 150.00	\$ 12.00
6/30/2021	Lizzett Cortez (9th Year Paralegal)	reviewed emails	0.08	\$ 250.00	\$ 20.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
7/1/2021	Breck Oyama (13th Year Paralegal)	review emails re status of PAMx	0.17	\$ 300.00	\$ 51.00
7/2/2021	David Spivak (25th Year Attorney)	review OC changes to MPA mx prelim approval	1.00	\$ 700.00	\$ 700.00
7/2/2021	Breck Oyama (13th Year Paralegal)	review emails, save briefing, upload LWDA, finalize DGS decl and email CC, save/review PAO, calendar reminders re FAMx tasks	0.33	\$ 300.00	\$ 99.00
7/2/2021	Breck Oyama (13th Year Paralegal)	save/email client copies of PAMx, update deadline chain	0.17	\$ 300.00	\$ 51.00
7/6/2021	Lizzett Cortez (9th Year Paralegal)	Reviewed emails re MX and feed	0.25	\$ 250.00	\$ 62.50
7/14/2021	Lizzett Cortez (9th Year Paralegal)	marked off completed tasks	0.08	\$ 250.00	\$ 20.00
7/26/2021	Breck Oyama (13th Year Paralegal)	review court notice, update calendar/FV	0.08	\$ 300.00	\$ 24.00
8/5/2021	Breck Oyama (13th Year Paralegal)	download/circulate REDACTED mx prelim	0.17	\$ 300.00	\$ 51.00
8/10/2021	Breck Oyama (13th Year Paralegal)	review invoice, email JS Held	0.50	\$ 300.00	\$ 150.00
8/11/2021	Breck Oyama (13th Year Paralegal)	review calendar conflicts, email DGS	0.17	\$ 300.00	\$ 51.00
8/20/2021	Lizzett Cortez (9th Year Paralegal)	Reviewed feed and emails	0.08	\$ 250.00	\$ 20.00
8/24/2021	Lizzett Cortez (9th Year Paralegal)	reviewed emails and feed	0.08	\$ 250.00	\$ 20.00
8/24/2021	Breck Oyama (13th Year Paralegal)	email TPA, calendar deadlines re PAO, email client	1.00	\$ 300.00	\$ 300.00
8/25/2021	Lizzett Cortez (9th Year Paralegal)	reviewed emails	0.08	\$ 250.00	\$ 20.00
8/29/2021	David Spivak (25th Year Attorney)	Review decl of D HR re workweeks and class members	0.17	\$ 700.00	\$ 119.00
9/23/2021	David Spivak (25th Year Attorney)	Review email messages concerning third-party administrator and class list of data	0.25	\$ 700.00	\$ 175.00
9/23/2021	Breck Oyama (13th Year Paralegal)	f/u w/ TPA	0.08	\$ 300.00	\$ 24.00
9/29/2021	Breck Oyama (13th Year Paralegal)	emails w/ TPA and OC	0.25	\$ 300.00	\$ 75.00
9/29/2021	Breck Oyama (13th Year Paralegal)	review emails, email TPA re notice docs	0.17	\$ 300.00	\$ 51.00
9/29/2021	Gregory Wilbur (Formerly Employed 7th Year Attorney)	Review of stipulation to vacate trial date	0.10	\$ 450.00	\$ 45.00
9/29/2021	Breck Oyama (13th Year Paralegal)	save/review stip, email team	0.17	\$ 300.00	\$ 51.00
10/7/2021	Breck Oyama (13th Year Paralegal)	review TPA calcs, email TPA re ph# corrections	0.25	\$ 300.00	\$ 75.00
10/7/2021	Breck Oyama (13th Year Paralegal)	review TPA notice/calcs	0.58	\$ 300.00	\$ 174.00
10/7/2021	David Spivak (25th Year Attorney)	review and revise settlement notice docs	1.00	\$ 700.00	\$ 700.00
10/7/2021	Breck Oyama (13th Year Paralegal)	email TPA re Spanish	0.17	\$ 300.00	\$ 51.00
10/8/2021	Breck Oyama (13th Year Paralegal)	review/save TPA revised mailing docs, email team, email TPA correct ph#s	0.17	\$ 300.00	\$ 51.00
10/8/2021	David Spivak (25th Year Attorney)	emails re class notice; review settlement agreement	0.08	\$ 700.00	\$ 56.00
10/12/2021	Breck Oyama (13th Year Paralegal)	f/u TPA re mailing	0.08	\$ 300.00	\$ 24.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
10/22/2021	Gregory Wilbur (Formerly Employed 7th Year Attorney)	Review emails	0.08	\$ 450.00	\$ 36.00
10/25/2021	Lizzett Cortez (9th Year Paralegal)	Returned class members phone call. Messaged Anel.	0.08	\$ 250.00	\$ 20.00
10/25/2021	Lizzett Cortez (9th Year Paralegal)	messages w/ NG re class member. Call w/ Class member.	0.17	\$ 250.00	\$ 42.50
10/25/2021	Nora Greer (15+ Year Paralegal)	TC with PCM	0.08	\$ 200.00	\$ 16.00
10/27/2021	Nora Greer (15+ Year Paralegal)	TC with deceased PCM wife, message BO and LC	0.08	\$ 200.00	\$ 16.00
10/29/2021	Lizzett Cortez (9th Year Paralegal)	saved weekly report	0.08	\$ 250.00	\$ 20.00
10/29/2021	David Spivak (25th Year Attorney)	review TPA weekly report	0.08	\$ 700.00	\$ 56.00
10/29/2021	David Spivak (25th Year Attorney)	call with PCM re settlement	0.08	\$ 700.00	\$ 56.00
TOTAL PRE-MULTIPLIER LODESTAR AS OF 11/2/2021			789.54		\$ 328,825.00

Attorney/Paralegal	Total Hours	Rate	Pre-Multiplier Lodestar
David Spivak (25th Year Attorney)	220.81	\$ 700.00	\$ 154,567.00
Michelle Grimberg (Formerly Employed 20+ Year Attorney)	0.17	\$ 650.00	\$ 110.50
Gregory Wilbur (Formerly Employed 7th Year Attorney)	0.18	\$ 450.00	\$ 81.00
Carl Kaplan (Formerly Employed 2nd Year Attorney)	204.76	\$ 350.00	\$ 71,666.00
Breck Oyama (13th Year Paralegal)	232.73	\$ 300.00	\$ 69,819.00
Lizzett Cortez (9th Year Paralegal)	129.15	\$ 250.00	\$ 32,287.50
Maya Cheaitani (1st Year Attorney)	0.25	\$ 250.00	\$ 62.50
Nora Greer (15+ Year Paralegal)	0.16	\$ 200.00	\$ 32.00
Jessica Bencomo (1st Year Legal Secretary)	0.08	\$ 150.00	\$ 12.00
Silvia Kirollos (Formerly Employed 1st Year Legal Secretary)	1.25	\$ 150.00	\$ 187.50
TOTAL AS OF 11/5/21	789.54		\$ 328,825.00

Firm	Total Hours	Pre-Multiplier Lodestar
The Spivak Law Firm	789.54	\$ 328,825.00
Blumenthal Nordrehaug Bhowmik De Blouw LLP	569.95	\$309,274.25
Grand Total	1,359.49	\$ 638,099.25

Fees Requested	\$ 600,000.00
Multiplier	0.940

EXHIBIT I

Date	Expense Type	Expense Description	Expense Amount
11/12/2019	Photocopies	printing retainer/copies	\$ 6.50
12/2/2019	Postage	Postage Nov 2019	\$ 30.00
12/3/2019	LWDA Filing Fee	LWDA Filing Fee, check # [REDACTED]	\$ 75.00
12/16/2019	Attorney Service-Filing	onelegal invoice # [REDACTED] filing fee \$435 complex fee \$1000	\$ 1,571.64
12/18/2019	Attorney Service-Service	onelegal invoice # [REDACTED] SOP #1	\$ 40.00
12/18/2019	Attorney Service-Service	onelegal invoice # [REDACTED] SOP #2	\$ 40.00
12/20/2019	Attorney Service-Filing	onelegal invoice # [REDACTED]	\$ 25.00
12/20/2019	Attorney Service-Filing	onelegal invoice # [REDACTED]	\$ 25.00
1/2/2020	Postage	Postage Dec 2019	\$ 11.60
1/22/2020	Attorney Service-Chambers Copies	onelegal invoice # [REDACTED]	\$ 36.25
2/5/2020	Lexis or Westlaw	Westlaw usage Jan 2020	\$ 36.42
2/18/2020	Attorney Service-Chambers Copies	OLC invoice # [REDACTED]	\$ 18.15
2/27/2020	Photocopies	printing authos/evid pres/docs	\$ 9.50
3/3/2020	Lexis or Westlaw	Westlaw usage Feb 2020	\$ 0.95
3/3/2020	Postage	Postage Feb 2020	\$ 39.60
3/3/2020	Lexis or Westlaw	Lexis usage Feb 2020	\$ 99.25
3/9/2020	Photocopies	printing docs for discovery	\$ 3.00
3/10/2020	Attorney Service-Chambers Copies	OLC invoice # [REDACTED]	\$ 74.20
3/11/2020	Photocopies	printing new evid pres re pcm	\$ 2.50
3/11/2020	FedEx or UPS	FedexSameDay	\$ 40.66
4/1/2020	Lexis or Westlaw	Lexis usage Mar 2020	\$ 27.67
4/1/2020	Postage	Postage Mar 2020	\$ 1.30
4/7/2020	Records Requests	Riverside download complaint competing case, order # [REDACTED]	\$ 47.00
4/24/2020	Records Requests	DLSE CPRA records req [REDACTED]	\$ 14.44
4/28/2020	Records Requests	Riverside docket search, order # [REDACTED]	\$ 1.00
5/1/2020	Lexis or Westlaw	Lexis usage Apr 2020	\$ 9.69
6/2/2020	Lexis or Westlaw	Lexis usage May 2020	\$ 12.42
7/17/2020	Data Entry for Mediation	Data entry, Abhishek Sharma Invoice # [REDACTED]	\$ 175.00
7/31/2020	Lexis or Westlaw	Lexis usage June 2020	\$ 11.74
8/4/2020	Data Analysis for Mediation	Elliot Powell - analysis	\$ 200.00
8/4/2020	Data Analysis for Mediation	Elliot Powell - add'l analysis	\$ 150.00
8/19/2020	CourtCall	Courtcall [REDACTED]	\$ 94.00
8/20/2020	Records Requests	San Bernardino Court order # [REDACTED]	\$ 32.50
11/2/2020	Lexis or Westlaw	Westlaw Oct 2020	\$ 59.19
11/2/2020	Lexis or Westlaw	Lexis Oct 2020	\$ 31.32
11/3/2020	Records Requests	Riverside name search, order# [REDACTED] and SRC2014894	\$ 4.50
11/4/2020	Data Analysis for Mediation	Aravind Domakonda Invoice (11 hours on Ayala, Aviles data analysis)	\$ 550.00
12/1/2020	Records Requests	Pacer download Nov 2020 (TSLF)	\$ 53.00
12/1/2020	Lexis or Westlaw	Westlaw usage Nov 2020	\$ 84.06
12/14/2020	Records Requests	LASC download docs Navarro	\$ 11.00
12/15/2020	Court Reporter	Veritext invoice# [REDACTED] job# 4297746 depo Ayala 11/3/2020; PAID 12/15/20	\$ 1,067.35
12/16/2020	Depo Summaries	Kline invoice # [REDACTED] depo summary Ayala	\$ 156.75
12/21/2020	Records Requests	First Legal Invoice # [REDACTED] Subpoena	\$ 96.23

Date	Expense Type	Expense Description	Expense Amount
12/23/2020	Expert Witness	Retainer Steward (DGS Paid via [REDACTED])	\$ 2,500.00
12/23/2020	Mediator Fees	Klerman INVOICE # [REDACTED]; DGS paid 12/23/20 \$3500; 1/25 \$250 sent separately	\$ 3,750.00
12/23/2020	Expert Witness	Retainer Petersen (DGS Paid via [REDACTED])	\$ 3,000.00
12/28/2020	Photocopies	Excelsior invoice # [REDACTED] re hard drive copies D doc prod	\$ 644.20
12/29/2020	Depo Summaries	Kline invoice # [REDACTED] depo summary Cosic	\$ 70.13
12/31/2020	Court Reporter	Steno Invoice # [REDACTED] Siria Reza, PMK	\$ 4,506.85
12/31/2020	Court Reporter	Steno Invoice # [REDACTED] Valentina Cosic-PMK	\$ 2,533.40
12/31/2020	Court Reporter	Steno Invoice # [REDACTED] Mike Johnson	\$ 3,853.36
12/31/2020	Court Reporter	Steno Invoice # [REDACTED] Saul Gallegos	\$ 2,961.95
12/31/2020	Depo Summaries	Kline Invoice # [REDACTED] depo summary Gallegos	\$ 80.03
12/31/2020	Court Reporter	Steno Invoice # [REDACTED] John Joseph Reinhardt Jr. PMK	\$ 3,022.06
1/4/2021	FedEx or UPS	Fedex invoice # [REDACTED], tracking [REDACTED]	\$ 31.38
1/4/2021	Lexis or Westlaw	Lexis usage Dec 2020	\$ 489.21
1/4/2021	Records Requests	Pacer downloads Dec 2020 (TSLF)	\$ 136.90
1/4/2021	Lexis or Westlaw	Westlaw usage Dec 2020	\$ 275.33
1/4/2021	Records Requests	LASC downloads [REDACTED]	\$ 150.60
1/4/2021	Depo Summaries	Kline Invoice # [REDACTED] depo summary Reinhardt	\$ 89.10
1/4/2021	Records Requests	Pacer downloads Dec 2020 (DGS)	\$ 0.20
1/4/2021	FedEx or UPS	Fedex Invoice # [REDACTED], tracking [REDACTED]	\$ 78.46
1/4/2021	Records Requests	LASC download [REDACTED]	\$ 19.40
1/6/2021	FedEx or UPS	Fedex invoice # [REDACTED], tracking [REDACTED]	\$ 66.51
1/7/2021	Depo Summaries	Kline invoice # [REDACTED] depo summary Johnson	\$ 108.00
1/15/2021	FedEx or UPS	Fedex manual filing, tracking # [REDACTED] invoice [REDACTED]	\$ 18.94
1/20/2021	Depo Summaries	Kline invoice # [REDACTED] depo summary Reza	\$ 117.00
1/20/2021	Expert Witness	Petersen Invoice # [REDACTED] = \$6900 (\$4950 BAM \$1950 TSLF)	\$ 1,950.00
1/21/2021	Photocopies	Excelsior [REDACTED] re hard drive copies D doc prod	\$ 812.80
1/28/2021	Expert Witness	Retainer Donohoe (JS Held), check # [REDACTED]	\$ 5,000.00
1/28/2021	Expert Witness	EmployStats Invoice # [REDACTED] (Steward) = \$17,618.75 split with BAM	\$ 8,809.38
2/1/2021	Records Requests	Pacer Downloads Jan 2021 (TSLF)	\$ 52.90
2/3/2021	Lexis or Westlaw	Lexis usage Jan 2021	\$ 462.58
2/3/2021	Lexis or Westlaw	Westlaw usage Jan 2021	\$ 144.88
2/9/2021	Expert Witness	Petersen Invoice # [REDACTED] (\$1,650 split with BAM)	\$ 825.00
2/17/2021	Expert Witness	JS Held invoice # [REDACTED] (Donohoe) = \$37,762.50 split with BAM; readjusted for \$317 rate to \$31,921.90; less \$5k retainer = \$8,040.65	\$ 8,040.65
2/25/2021	Expert Witness	Petersen invoice # [REDACTED] (\$825 split with BAM)	\$ 412.50
3/2/2021	Lexis or Westlaw	Westlaw usage Feb 2021	\$ 0.86
3/2/2021	Postage	Postage Feb 2021	\$ 22.71
3/11/2021	Expert Witness	EmployStats Invoice # [REDACTED] (Steward) = \$9,683.75 split with BAM	\$ 4,841.88
3/16/2021	Records Requests	LA download [REDACTED]	\$ 4.00
3/29/2021	Depo Summaries	Kline Invoice # [REDACTED] depo summary Donohoe	\$ 56.25
4/1/2021	Records Requests	Pacer downloads Mar 2021 (TSLF)	\$ 0.20
4/1/2021	Lexis or Westlaw	Westlaw usage Mar 2021	\$ 136.43

Date	Expense Type	Expense Description	Expense Amount
4/2/2021	Depo Summaries	Kline invoice # [REDACTED] depo summary Steward	\$ 84.75
4/2/2021	Mediator Fees	Mediation fees Lou Marlin Invoice # [REDACTED]	\$ 4,000.00
4/7/2021	Depo Summaries	Kline invoice # [REDACTED] depo summary Petersen	\$ 78.00
4/9/2021	Expert Witness	Petersen Invoice # [REDACTED] (\$1,375.00 split with BAM)	\$ 687.50
4/20/2021	Depo Summaries	Kline Invoice # [REDACTED] depo summary Aviles	\$ 107.25
5/4/2021	Lexis or Westlaw	Lexis Apr 2021	\$ 152.77
5/4/2021	Records Requests	Pacer downloads Apr 2021 (TSLF)	\$ 13.80
6/4/2021	Records Requests	Pacer download May 2021 (DGS)	\$ 0.20
6/4/2021	Records Requests	Pacer download May 2021 (TSLF)	\$ 0.20
8/5/2021	Records Requests	LASC download [REDACTED]	\$ 18.60
11/3/2021	Photocopies	Konika photocopies through 11/3/21 (213 pages)	\$ 53.25
TBD	Attorney Service-Chambers Copies	Estimated attorney service charges for chambers copies of motion for fees	\$ 70.95
TBD	Attorney Service-Chambers Copies	Estimated attorney service charges for chambers copies of motion for final approval	\$ 30.95
TBD	Attorney Service-Chambers Copies	Estimated attorney service charges for chambers copies of supplemental briefing in support of motion for fees and motion for final approval	\$ 14.95
TBD	Attorney Service-Chambers Copies	Estimated attorney service charges for chambers copies of final accounting declarations	\$ 14.95
The Spivak Law Firm Costs Through 11/2/21			\$ 70,347.73
Blumenthal Nordrehaug Bhowmik De Blouw LLP Costs Through 11/2/21			\$ 62,868.29
The Spivak Law Firm Estimated Future Costs			\$ 131.80
CLASS COUNSEL TOTAL COSTS THROUGH FINAL ACCOUNTING OF SETTLEMENT			\$ 133,347.82

EXHIBIT J

Ayala, et al. v. UPS Supply Chain Solutions, Inc., et al.

LEGEND

Abbreviation	Definition
1AC	first amended complaint
26f	Rule 26f
2AC	second amended complaint
ABI	Atkinson Baker, court reporter/videographer for Plaintiff Ayala's counsel
admin	administration or administrator
admin	third party bid administrator
Adrian	Adrian Aviles, Plaintiff
agmt	agreement
AJ	Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
app	approval
Aravind	Aravind Domakonda, data analyst for Plaintiff Ayala's counsel
autho	authorization
Aviles	Adrian Aviles, Plaintiff
Ayala	Eric Ayala, Plaintiff
b/c	because
BAM	Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
Bhowmik	Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
bid	bid from third party administrator
Blumenthal	Norman B. Blumenthal of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
BO	Breck Oyama, paralegal for Plaintiff Ayala's counsel
Breck	Breck Oyama, paralegal for Plaintiff Ayala's counsel
Brown	Elizabeth (Lisa) Brown of GBG LLP, attorney for Defendants
BW	Belaire West
calcs	calculations
Carl	Carl Kaplan, formerly employed attorney for Plaintiff Ayala
Carlos	Carlos Martinez of GBG LLP, attorney for Defendants
CERT	certification
CK	Carl Kaplan, formerly employed attorney for Plaintiff Ayala
CL	client
cmc	case management conference
CMO	Case Management Order
conf	conference
Cosic	Valentina Cosic, employee of UPS, PMK deponent
CPRA	California public records act
CPT	parties' third party administrator
CPT	CPT Group, Inc., administrator for class list sampling
CRC	California Rules of Court
David	David Spivak, attorney for Plaintiff Ayala
decl	declaration
def	defendant
dept	department
DGS	David Spivak, attorney for Plaintiff Ayala
disc	discovery
DLSE	Division of Labor Standards Enforcement
doc	document
docs	documents
Donohoe	Richard Donohoe of J.S. Held LLC, expert for Plaintiffs
Ds	Defendants UPS Supply Chain Solutions, Inc. and UPS Supply Chain Solutions General Services, Inc.
Dwight	Dwight Steward, Ph.D. of EmployStats, expert for Plaintiffs
ee	employee
eer	employer
Eric	Eric Ayala, Plaintiff
eval.	evaluation
evid pres	evidence preservation
exh	exhibit
exhs	exhibits
ext	extension
f/u	follow up
FA	Final Approval

Abbreviation	Definition
FAMx	final approval mx
FAO	final approval order
FAQ	Frequently Asked Questions
fed	federal
fwd	forward
fyi	for your information
Gallegos	Saul Gallegos, employee of UPS, deponent
Greg	Gregory Wilbur, former attorney for Plaintiff Ayala
GW	Gregory Wilbur, former attorney for Plaintiff Ayala
hrs	hours
indiv	individual
ISO	in support of
JB	Jessica Bencomo, paralegal for Plaintiff Ayala's counsel
Jeff	Jeffrey Petersen, Ph.D. of Allman & Petersen Economics, expert for Plaintiffs
Jeffrey	Jeffrey Petersen, Ph.D. of Allman & Petersen Economics, expert for Plaintiffs
Jennifer	Jennifer Svanfeldt of GBG LLP, attorney for Defendants
Jessica	Jessica Bencomo, paralegal for Plaintiff Ayala's counsel
John	John Joseph Reinhardt, Jr., employee of UPS, PMK deponent
Johnson	Michel Johnson, employee of UPS, PMK deponent
JSR	joint status report
Klerman	Lisa Klerman, Esq., first mediator
Kyle	Kyle R. Nordrehaug of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
LC	Lizzett (Rubalcava) Cortez, paralegal for Plaintiff Ayala's counsel
Lisa	Lisa Klerman, Esq., first mediator
Lisa	Elizabeth (Lisa) Brown of GBG LLP, attorney for Defendants
Lizzett	Lizzett (Rubalcava) Cortez, paralegal for Plaintiff Ayala's counsel
Lou	Lou Marlin, Esq., second mediator
lt	letter
LWDA	Labor and Workforce Development Agency
M&C	meet and confer
M&C	Meet and Confer
Marlin	Lou Marlin, Esq., second mediator
Martinez	Carlos Martinez of GBG LLP, attorney for Defendants
Matthew	Matthew Morris of GBG LLP, attorney for Defendants
Maya	Maya Cheaitani, attorney for Plaintiff Ayala
MC	Maya Cheaitani, attorney for Plaintiff Ayala
MG	Michelle Grimberg, former attorney for Plaintiff Ayala
Michel	Michel Johnson, employee of UPS, PMK deponent
Michelle	Michelle Grimberg, former attorney for Plaintiff Ayala
Morris	Matthew Morris of GBG LLP, attorney for Defendants
MPA	memorandum of points and authorities
mtg	meeting
Mukherjee	Piya Mukherjee of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
mx	motion
N&A	Notice of Acknowledgment and Receipt
NG	Nora Greer, paralegal for Plaintiff Ayala's counsel
Nora	Nora Greer, paralegal for Plaintiff Ayala's counsel
Nordrehaug	Kyle R. Nordrehaug of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
Norman	Norman B. Blumenthal of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
OC	GBG LLP, attorney for Defendants
OC	opposing counsel
OCR	optical character recognition
OLC	Plaintiff Ayala's counsel's attorney service
OneLegal	Plaintiff Ayala's counsel's attorney service
Online Legal Courier	Plaintiff Ayala's counsel's attorney service
OPC	opposing counsel
OSC	Order to Show Cause
PAGA	private attorneys general act
PAMx	preliminary approval mx
PAO	preliminary approval order
pc	phone call
PCM	putative class member

Abbreviation	Definition
Petersen	Jeffrey Petersen, Ph.D. of Allman & Petersen Economics, expert for Plaintiffs
Phoenix	Phoenix Settlement Administrators, administrator for settlement
Piya	Piya Mukherjee of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
plf	plaintiff
PMK	person most knowledgeable
PMQ	person most qualified
PO	proposed order
pos	proof of service
postlim	postliminary
prelim	preliminary
prep	preparation/prepare
prop	proposed
r4p	request for production
Rapid Legal	Plaintiff Ayala's counsel's attorney service
re	regarding
Reinhardt	John Joseph Reinhardt, Jr., employee of UPS, PMK deponent
req	request
resp	response
rev	revised
Reza	Siria Reza, employee of UPS, deponent
Richard	Richard Donohoe of J.S. Held LLC, expert for Plaintiffs
Rivapalacio	Victoria B. Rivapalacio of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
rog	interrogatory
S&C	summons and complaint
SA	settlement agreement
Saul	Saul Gallegos, employee of UPS, deponent
sched	schedule/scheduling
settl.	settlement agreement
sig	signature
Silvia	Silvia Kirolos, formerly employed legal secretary for Plaintiff Ayala's counsel
Siria	Siria Reza, employee of UPS, deponent
SK	Silvia Kirolos, formerly employed legal secretary for Plaintiff Ayala's counsel
SOL	statute of limitations
SOP	Service of Process
SOS	Secretary of State
Spivak	David Spivak, attorney for Plaintiff Ayala
srog	special interrogatory
Steward	Dwight Steward, Ph.D. of EmployStats, expert for Plaintiffs
stip	stipulation
suppl	supplement/supplemental
Svanfeldt	Jennifer Svanfeldt of GBG LLP, attorney for Defendants
TC	telephone call
teleconf	teleconference
TOA	Table of Authorities
Tori	Victoria B. Rivapalacio of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
TPA	third party administrator
UPS	Defendants UPS Supply Chain Solutions, Inc. and UPS Supply Chain Solutions General Services, Inc.
Valentina	Valentina Cosic, employee of UPS, PMK deponent
vcard	Outlook contact
Victoria	Victoria B. Rivapalacio of Blumenthal Nordrehaug Bhowmik De Blouw LLP, counsel for Plaintiff Aviles
VM	voicemail
vmail	voicemail

EXHIBIT K

CO-COUNSEL AGREEMENT

This Co-Counsel Agreement (“Agreement”) reflects the understanding between David Spivak of and for The Spivak Law Firm (“David Spivak” or “Ayala Counsel”), on the one hand, and Norm Blumenthal and Aparajit Bhowmik of and for Blumenthal Nordrehaug Bhowmik De Blouw, LLP (“Aparajit Bhowmik” or “Aviles Counsel”), on the other hand (all undersigned counsel collectively referred to as “Counsel,” or the “Firms”), regarding their representation of plaintiffs in litigation against UPS Supply Chain Solutions, Inc., UPS Supply Chain Solutions General Services, Inc., and related entities (“Defendants”), including the lawsuits entitled *Eric Ayala v. UPS Supply Chain Solutions, Inc.*, Case No. 5:20-cv-00117-PSG-AFM (United States District Court of Central District of California) and *Adrian Aviles v. UPS Supply Chain Solutions, Inc.*, Case No. RIC2000727 (Superior Court of California for the County of Riverside).

1. Responsibilities of Counsel and Division of Labor

The Firms shall remain at all times responsible to their Clients and shall advance the best interests of the Clients as well as the parallel objectives of class or collective action representation. The Firms will jointly allocate work, taking into account each firm’s resources, expertise, and location. Accordingly, Ayala Counsel will have primary responsibility for the *Ayala* litigation and the claims asserted therein and Aviles Counsel will have primary responsibility for the *Aviles* litigation and claims asserted therein. This allocation is for efficiency purposes, and it is expected and agreed that the Firms will work cohesively and help each other to advance the entirety of the case despite having primary responsibilities in different areas.

If, in the course of the litigation, it becomes apparent to one or more of the Firms that there are more efficient or more effective methods or structures for litigating the claims herein, the Firms will seek to agree on such methods or structures and any corresponding division of responsibilities. In the event the Firms are unable to reach an agreement, the dispute resolution procedures of Section 7 below may be invoked.

2. Expenses of Litigation

The prosecution of claims against Defendants is likely to entail significant expense, including internal expense by Counsel for services provided at customary rates (*e.g.*, in-house photocopying, delivery/courier services, computerized legal research, travel, telephone, facsimile, etc.), as well as external expenses (*e.g.*, court costs, fees and expenses of consulting and testifying experts, court reporters, videographers,

Spivak DS, Blumenthal AB, Bhowmik ajb; Ayala EA, Aviles

CO-COUNSEL AGREEMENT

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Co-Counsel Agreement: Ayala & Aviles
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deposition and transcript costs, document reproduction, document coding and organization services, meeting expense, travel expense of experts, investigative services, jury consultants, costs of photography, exhibits, graphic design and other media used to present or illuminate evidence or argument, and other expenses of communication).

Each Firm will advance its own general office overhead; telephone and fax charges; copying (excluding copying related to formal document productions); mailing (excluding mailings to class or potential class members, see below); travel, meals, and lodging; word processing; and clerical support ("Individual Firm Expenses").

Each Firm will also advance all "Common Expenses" relating to the litigation that it incurs after the date of this Agreement. "Common Expenses" include, but are not limited to, the following: the costs of copying, coding, imaging, scanning and/or rendering optical character reader readable documents to be produced to or received from the Defendants; expert fees and expenses; court reporter fees and transcript costs; witness fees and expenses; investigative costs (not including the use of Westlaw or Lexis or similar services); expenses associated with preparation of demonstrative exhibits including trial exhibits; costs of mailings to class and/or potential class members or collective action members; and the creation and updating of a webpage for class members and the public. If a particularly large Common Expense is required to be paid, the Firms will confer with each other to reach agreement regarding an equitable division for the advancement of that cost.

As noted below in paragraph 5(a), prior to any division of any fee award between the Firms, each Firm shall be reimbursed out of the fee amount for any Individual Firm or Common Expenses for which it has not otherwise been reimbursed.

3. Fee and Expense Records

Each Firm agrees to keep detailed, contemporaneous records of all billable time expended, including attorney and paralegal time, and all necessary costs and expenses (both Common and Individual Firm Expenses) incurred in this case. Each Firm agrees to exchange copies of such records if any Firm requests them.

4. Recovery of Attorneys' Fees and Expenses

The Firms will attempt to recover their full fees and expenses from Defendants pursuant to state and/or federal law, the Common Fund Doctrine, or through

Spival  Blumenthal  Bhowmik ^{a j b} ; Ayala ; Aviles 

Co-Counsel Agreement: Ayala & Aviles

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Co-Counsel Agreement: Ayala & Aviles
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settlement with Defendants. The Firms recognize, however, that any attempt to recover fees and expenses from the Defendants may not be successful or may not be sufficient to fully compensate each Firm for all the costs incurred and/or the hours expended in pursuing the lawsuits. The Firms agree to file (and fully cooperate and support each other in) a joint motion for attorneys' fees and expenses should doing so become necessary or prudent. Additionally, each Firm will be entitled to reimbursement of its Individual Firm Expenses and Common Expenses awarded by the Court(s) or negotiated by settlement.

5. Fee Division

In the event that fees and costs are obtained by Order of the Court(s) or otherwise, the total amount of the fees awarded to any or all Firms shall be combined, then divided among the Firms as follows:

- a) Prior to any division of the combined fee amount between the Firms, each Firm shall each be reimbursed out of the fee amount for any Common or Individual Firm Expenses for which it has not otherwise been reimbursed;
- b) The combined fee recovery shall be divided among the Firms as follows: (1) fifty percent (50%) of the combined fee award shall be paid to Ayala Counsel and (2) the remaining fifty percent (50%) of the combined fee award shall be paid to Aviles Counsel.

6. Disclosures

The Firms agree to disclose this fee division agreement to their clients. The Firms intend to comply fully with Rule 2-200(A) of the California Rules of Professional Conduct, which provides:

A member shall not divide a fee for legal services with a lawyer who is not a partner of, associate of, or shareholder with the member unless:

- (1) The client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and

Spival ³  Blumenthal  Showmik ^{ajb} ; Ayala ; Aviles 

Co-Counsel Agreement: Ayala & Aviles

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Co-Counsel Agreement: Ayala & Aviles
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- (2) The total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable as that term is defined in rule 4-200.

The legal fees of all Counsel's respective clients will not be increased, nor will the contingency nature of the representation be altered, by reason of this Agreement. The Firms' clients have the right to accept or reject this fee arrangement.


7. Dispute Resolution

The Firms understand and agree that any dispute arising out of this Agreement shall be resolved through mediation; if mediation fails, then through binding arbitration. JAMS shall be the chosen provider of mediation and arbitration services. Mediation and Arbitration shall be conducted in California pursuant to JAMS then Mediation/Arbitration Rules and Procedures. Arbitration shall be before one neutral arbitrator, who is a California licensed attorney and who will apply California state law.

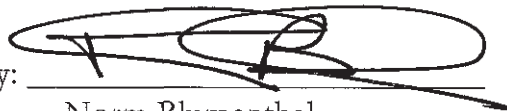
8. Interpretation; Construction

The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. Every party has fully participated in the negotiation of the terms of this Agreement. The parties acknowledge that they had an opportunity to negotiate and draft this agreement and therefore the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. Each signatory represents he/she has the authority to enter into this Agreement and bind the Party for which he/she is signing.

Date: 04 / 30 / 2020

By: 
David Spivak,
The Spivak Law Firm


Date: 4/29/20

By: 
Norm Blumenthal
Blumenthal Nordrehaug Bhowmik De
Blouw, LLP

Spivak  & Blumenthal  Bhowmik ^{a j b} ; Ayala ; Aviles 

Co-Counsel Agreement: Ayala & Aviles
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Date: 29 April 2020

By: 
Aparajit Bhowmik,
Blumenthal Nordrehaug Bhowmik De
Blouw, LLP

I consent to this Co-Counsel Agreement, including the division of fees.

Date: 04 / 30 / 2020

By: 
Eric Ayala

I consent to this Co-Counsel Agreement, including the division of fees.

Date: _____

By: _____
Adrian Aviles

  Spivak  Blumenthal  Bhowmik ajb, Ayala EA, Aviles _____

Co-Counsel Agreement: Ayala & Aviles

Page 5 of 6

I consent to this Co-Counsel Agreement, including the division of fees.

Date: _____

By: _____

Eric Ayala

I consent to this Co-Counsel Agreement, including the division of fees.

Date: Apr 29, 2020

By:  _____
Adrian Aviles (Apr 29, 2020)

Adrian Aviles

EXHIBIT L

Zalewa v. Tempo Research Corporation, Not Reported in Cal.Rptr.3d (2013)

2013 WL 766535
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.
Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. [Charles F. Palmer](#), Judge. Reversed and remanded. (Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

Dickstein Shapiro, [Arthur Silbergeld](#), [Christine de Bretteville](#) for Defendants and Appellants.

Altshuler Berzon, [Michael Rubin](#), [Eileen B. Goldsmith](#); Law Offices of Joseph D. Tuchmayer, [Joseph D. Tuchmayer](#); Law Offices of Todd Arron, [Todd S. Arron](#) for Plaintiffs and Respondents.

Opinion

[BOREN](#), P.J.

*1 We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the “prevailing party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the prevailing party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

FACTS²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

Zalewa v. Tempo Research Corporation, Not Reported in Cal.Rptr.3d (2013)

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

Zalewa v. Tempo Research Corporation, Not Reported in Cal.Rptr.3d (2013)

*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

Zalewa v. Tempo Research Corporation, Not Reported in Cal.Rptr.3d (2013)

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,

Zalewa v. Tempo Research Corporation, Not Reported in Cal.Rptr.3d (2013)

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*

Zalewa v. Tempo Research Corporation, Not Reported in Cal.Rptr.3d (2013)

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 M

Cun v. Cafe Tiramisu LLC, Not Reported in Cal.Rptr.3d (2011)

2011 WL 5979937
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC–09–484879). | Nov. 30, 2011.

Attorneys and Law Firms

[Michael Paul Guta](#), Law Offices of John E. Hill, Oakland, CA, for Plaintiff and Appellant.

[Wesley Jerome Fastiff](#), [Michael Gayland Pedhirney](#), Littler Mendelson, San Francisco, CA, for Defendant and Respondent.

Opinion

[NEEDHAM](#), J.

*1 Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to [Labor Code section 218.5](#), after the court granted respondent’s motion for summary judgment. Appellant contends: (1) [Labor Code section 218.5](#) did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under [Labor Code section 1194](#); (2) the court should have apportioned the attorney fees between appellant’s unpaid wages claim and her constructive termination claim, for which no attorney’s fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was “owed wages” and was “owed for accrued paid time off,” and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu’s “conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment.” In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and “reasonable attorney’s fees, pursuant to [Labor Code Section 218.5](#).” Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

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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

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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

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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 Spinoso [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.

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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 N

Csaszi v. Sharp Healthcare, Not Reported in Cal.Rptr.2d (2003)

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,

v.

SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, [S. Charles Wickersham, J.](#), granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, [Haller, J.](#), held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, [S. Charles Wickersham](#), Judge. Affirmed in part and reversed in part.

Opinion

[HALLER, J.](#)

*1 Cecilia Csaszi sued her former employer, Sharp Healthcare¹ (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. (*Code Civ. Proc.*, §§ 473, 1008.) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. (*Lab.Code*, § 218.5.) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

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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.

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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,

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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

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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

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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.”

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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

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between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of [section 1194](#). Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under [section 218.5](#).

*12 Csaszi alternatively argues that even if [section 218.5](#) is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at “the initiation of the action.” (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees “if *any* party to the action requests attorney’s fees and costs upon the initiation of the action .” (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be “awarded its costs of suit and attorney fees incurred therein....” That statement is sufficient to satisfy [section 218.5](#) ‘s requirement that attorney fees be requested at the “initiation of the action.”

DISPOSITION

We affirm the portions of the judgment finding in Sharp’s favor on Csaszi’s claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi’s first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp’s motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: [KREMER, P.J.](#), and [BENKE, J.](#)

Footnotes

- ¹ Although it appears that the correct name of Csaszi’s former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi’s complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant’s name.
- ² Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether [section 473](#)’s mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare *English v. Ikon Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with *Avila v. Chua* (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)
- ³ We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a [section 473](#) motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi’s proposed opposition filings contained in the appellate record.
- ⁴ Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.
- ⁵ All further statutory references are to the Labor Code.

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EXHIBIT O

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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.

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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

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“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 ‘multipl[ication 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.

Villalobos v. Guertin, Not Reported in F.Supp.2d (2009)

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.

Villalobos v. Guertin, Not Reported in F.Supp.2d (2009)

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT P

April 29, 2014

HUFF
POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning - make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

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Highlighted Most Recent Oldest Most Faved My Conversations

Pippen
287 Fans

2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

FAVE SHARE MORE

DHC

SUPER USER · 56 Fans

1

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

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

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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?

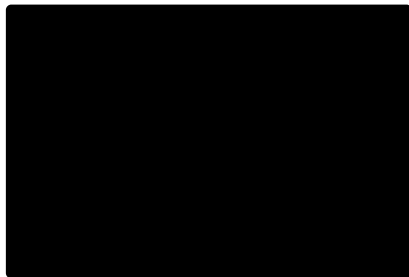
11 JAN 2012 4:52 AM

FAVE SHARE MORE

EXHIBIT Q

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?

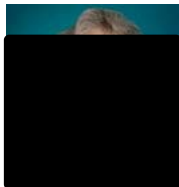
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by 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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EXHIBIT R

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#72/80/88
(7/1 hrg off)

CIVIL MINUTES - GENERAL

Case No.	CV 18-3012 PSG (AFMx)	Date	July 2, 2019
Title	La Tasha Coates v. United Parcel Service, Inc., et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge		
Wendy Hernandez	Not Reported		
Deputy Clerk	Court Reporter		
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):		
Not Present	Not Present		

Proceedings (In Chambers): The Court DENIES (1) Plaintiff’s motion for class certification, (2) Plaintiff’s motion for modification of the scheduling order and leave to file a First Amended Complaint, and (3) Defendant’s motion to exclude the Declaration of Eric Lietzow

Before the Court are three motions: (1) a motion for class certification, *see* Dkt. # 72-1 (“*Class Cert. Mot.*”), and (2) a motion for modification of the scheduling order and leave to file a First Amended Complaint, *see* Dkt. # 80 (“*Leave Mot.*”), filed by Plaintiff La Tasha Coates (“Plaintiff”); and (3) a motion to exclude the declaration of Plaintiff’s expert Eric Lietzow, *see* Dkt. # 88 (“*Exclude Mot.*”), filed by Defendant United Parcel Service, Inc. (“Defendant” or “UPS”). Both sides have filed oppositions and replies. *See* Dkts. # 92 (“*Class Cert. Opp.*”); # 91 (“*Leave Opp.*”); # 93 (“*Exclude Opp.*”); # 95 (“*Class Cert. Reply*”); # 94 (“*Leave Reply*”); # 96 (“*Exclude Reply*”).¹ The Court finds the matters appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. Having considered the moving papers, the Court **DENIES** all three motions.

¹ The character spacing in Plaintiff’s reply brief for her class certification motion is significantly smaller than any of the other briefs submitted to the Court. Although the Court will exercise its discretion to consider the reply on the merits, it admonishes Plaintiff’s attempt to evade the page limits set in the Court’s Standing Order through manipulation of the character spacing. *See Standing Order*, Dkt. # 13, ¶ 5(c). Any future filings that attempts to avoid the Court’s length and formatting requirements will be stricken.

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I. Background²

UPS is a global logistics provider that ships and delivers packages for its customers. *See Declaration of Derrick Waters*, Dkt. # 92-21 (“*Waters Decl.*”), ¶ 2. It employs tens of thousands of hourly, non-exempt employees throughout California, including drivers, loaders, unloaders, sorters, office staff, part-time managers, and others. *Id.* The majority of the hourly employees work in smaller “package centers” and larger “hubs,” unloading, sorting, and loading packages into and out of vehicles. *Id.* Employees work in designated areas of the facilities and work shifts with varying start times. *Id.*

Plaintiff worked as an hourly, non-exempt employee from October 2017 to May 2018. *See Declaration of La Tasha Coates*, Dkt. # 72-4 (“*Coates Decl.*”), ¶ 2. During her course of employment, she worked as a “package handler” at UPS’s Bell facility in Southern California. *Id.*

In December 2017, Plaintiff filed this putative class action against Defendant in Los Angeles Superior Court, asserting several causes of action under the California Labor Code. *See generally Complaint*, Dkt. # 1-2. Included among those were claims that Defendant failed to provide minimum wages for all hours worked, failed to provide meal and rest periods, and failed to provide complete and accurate wage statements. *See id.* Defendant removed the case to this Court, asserting jurisdiction under the Class Action Fairness Act. *See Notice of Removal*, Dkt. # 1.

Plaintiff now moves to certify the following classes:

Security Check Class: All non-exempt, non-delivery-driver employees employed by United Parcel Service, Inc. at a “Clean-In/Clean-Out” facility in California at any time from December 29, 2013 through the date of class certification.

² As a preliminary matter, both sides assert evidentiary objections. *See* Dkts. # 92-25, 97. To the extent that the Court relies on objected-to evidence, it relies only on admissible evidence and, therefore, the objections are **OVERRULED**. *See Godinez v. Alta-Dena Certified Dairy LLC*, No. CV 15-01652 RSWL (SSx), 2016 WL 6915509, at *3 (C.D. Cal. Jan. 29, 2016). Defendant has also filed a request for judicial notice of a court filing. *See* Dkt. # 92-23. Because the Court did not consider the filing in ruling on the motions, the request is **DENIED**.

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Meal Break Class: All non-exempt, non-delivery-driver employees employed by United Parcel Service, Inc. in California at any time from December 29, 2013 through the date of class certification.

See *Amended Notice of Motion for Class Certification*, Dkt. # 72, ¶ 2. In addition, Plaintiff also moves for certification of his “derivative claims,” which include all claims that are “entirely derivative of Plaintiff’s claims for off-the-clock work and unpaid meal period premiums.” *Class Cert. Mot.* 20:6–16.

A. The Security Check Class

UPS has approximately 100 package processing facilities in California, 43 of which have some level of security protocol in place. See *Waters Decl.* ¶ 4. The purpose of the security protocol is to prevent employee theft of packages. See *Class Cert. Mot.* 2:26–27.

The security protocol is outlined in the “Clean-In/Clean-Out” policy, but varies by location. The policy states:

All employees . . . and their personal belongings are subject to electronic scanning and/or physical inspection prior to entering and existing any UPS facility All employees are required to satisfy the hand wand and metal detector process; failure to comply will result in disciplinary action up to and including discharge.

Declaration of Jonathan Lee, Dkt. # 72-3 (“*Lee Decl.*”), Ex. L.

Everyone entering or exiting a secured UPS facility—regardless of whether the person is a UPS employee or not—follows the security procedures in place at each facility. *Waters Decl.* ¶ 4. Although the security protocol varies to some degree from facility to facility, the process generally requires the employees to undergo a security check when arriving and leaving the facility, either in an external guardhouse or within the employee entrance/exit of the main facility building. *Class Cert. Mot.* 4:14–17. According to the written Clean-In/Clean-Out Policy, the process requires employees to show their employee badges to security personnel, walk through a metal detector or present their persons to be checked by a handheld metal detector, and subject their belongings to search by security personnel. See *Lee Decl.*, Ex. L–P. UPS uses third-party security guards, who are subject to common instructions, to implement the Clean-In/Clean-Out Policy. See *Deposition of Richard Flamenco*, *Lee Decl.*, Ex. D (“*Flamenco Dep.*”), 88:1–4, 34:22–38:7.

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UPS does not consider time associated with the Clean-In/Clean-Out procedure to be compensable work time; instead it treats this time as commute time. *See Deposition of Marlo Austin, Lee Decl.*, Ex. H (“*Austin Dep.*”), 67:22–69:12. Accordingly, there are no work time entry terminals available for use in the security areas. *See Flamenco Dep.* 87:19–23, 89:20–90:2. In other words, when employees report to work, they must go through the security check before clocking in and, when they leave work, they must clock out before the security process. Plaintiff alleges that UPS’s failure to compensate employees for the time they worked off-the-clock while waiting for and undergoing security checks violates California wage and hour laws. *Class Cert. Mot.* 12:2–10.

B. The Meal Break Class

During the relevant period, all non-exempt employees were subject to policies that prohibit off-the-clock work and provide for legally-compliant meal and rest breaks. *See Deposition of Morgan Price, Defendant’s Compendium of Evidence*, Dkts. # 92-3–92-20 (“*Def. Compendium*”), Ex. 4-M (“*Price Dep.*”), 52:7–54:3. Nonetheless, Plaintiff alleges that two aspects of UPS’s policies violate California law because they allowed UPS to shirk its obligation to provide proper meal periods to its employees.

First, Plaintiff points to the fact that UPS schedules a large number of part-time employees to perform work in five-hour or shorter shifts. *See Deposition of Stephen Pappas, Lee Decl.*, Ex. B (“*Pappas Dep.*”), 84:12–85:15. This scheduling policy allows UPS to avoid having to provide meal periods to these employees, because a meal period is required only when the employee works more than five hours per day. *See id.* However, Plaintiff alleges that UPS implemented this policy, *knowing* that employees who are originally scheduled for shifts under five hours will often end up working for longer than five or six hours. *Class Cert. Mot.* 19:1–4. Second, Plaintiff alleges that the blanket, prospective meal period waiver, which purports to waive UPS’s obligation to (1) provide first meal periods for all future shifts less than six hours in length, and (2) provide second meal periods for all future shifts less than twelve hours in length, is unlawful. *See id.* 6:11–7:6; *see also Price Dep.* 119:5–22; *Lee Decl.*, Ex. S. She contends that the waiver violates California law because a meal break waiver can be obtained only after the meal obligation is “triggered,” and cannot be procured prospectively. *Class Cert. Mot.* 19 n.23.

The meal period waiver is presented to employees at the start of employment. *See Lee Decl.*, Exs. S, U. One of Defendant’s managers estimated that approximately 99 percent of employees sign this waiver. *See Austin Dep.* 123:22–124:12. The waivers are voluntary, and employees are informed that they are free to rescind the waivers at any time. *See Price Dep.*

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124:15–25; 119:5–12. Once an employee signs the waiver, UPS considers all future qualifying meal periods to be waived, unless and until the waiver is revoked. *See Lee Decl.*, Ex. U.

II. Plaintiff’s Motion for Class Certification

A. Legal Standard

“The class action is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (citing *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). “In order to justify a departure from that rule, a class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *Dukes*, 564 U.S. at 348–49 (internal quotation marks omitted).

In a motion for class certification, the burden is on the plaintiffs to make a prima facie showing that class certification is appropriate, *see In re N. Dist. of Cal. Dalkon Shield IUD Liab. Litig.*, 693 F.2d 847, 854 (9th Cir. 1982), and the court must conduct a “rigorous analysis” to determine the merit of the plaintiff’s arguments. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982). The plaintiff must be prepared to “prove” that there are “*in fact*” sufficiently numerous parties or that common questions exist, and frequently this will require some “overlap with the merits of the plaintiff’s underlying claim.” *Dukes*, 564 U.S. at 350. Rule 23 does not, however, grant the court license to “engage in free-ranging merits inquiries at the certification stage.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). “Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.” *Id.* at 466 (citing *Dukes*, 564 U.S. at 351 n.6).

Federal Rule of Civil Procedure 23 governs the maintenance of class actions in federal court. Rule 23(a) ensures that the named plaintiffs are “appropriate representatives of the class whose claims they wish to litigate.” *Dukes*, 564 U.S. at 349. Plaintiffs must satisfy all of Rule 23(a)’s four requirements—numerosity, commonality, typicality, and adequacy—and at least one of the requirements of Rule 23(b). *See Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011).

In this motion, Plaintiff moves for certification under Rule 23(b)(3). Rule 23(b)(3) requires the Court to find that (1) “questions of law or fact common to class members predominate over any questions affecting only individual class members” and (2) “that a class

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action is superior to other available methods for fairly and efficiently adjudicating the controversy.” See Fed. R. Civ. P. 23(b)(3). The dual requirements of Rule 23(b)(3) are commonly known as “predominance” and “superiority.” Moreover, Rule 23(b)(3) specifically mandates that the Court consider “the likely difficulties in managing a class action.” See *Briseno v. ConAgra Foods*, 844 F.3d 1121, 1126 (9th Cir. 2017).

B. Discussion

The Court addresses only the issues of commonality and predominance for each of Plaintiff’s proposed classes because it finds them dispositive.

i. *Security Check Class*

Under California law, wage and hour claims are governed by the California Labor Code and the wage orders issued by the Industrial Welfare Commission (“IWC”). Under IWC Wage Order No. 9, “[e]very employer [must] pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” Cal. Code. Reg. tit. 8, § 11090, subd. 4(B). “Hours worked” is defined 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.” *Id.* § 11090, subd. 2(G). The California Supreme Court has made clear that “it is only necessary that the worker be subject to the ‘control of the employer’ in order to be entitled to compensation.” *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 584 (2000).

Here, Plaintiff contends that the time employees spend waiting for and undergoing security checks under the Clean-In/Clean-Out policy (“the Policy”) should be considered “hours worked,” and that UPS violated California law when it failed to compensate for that time. *Class Cert. Mot.* 10:12–12:10.

a. *Commonality*

Under Rule 23(a)(2), a plaintiff must show that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). This means that the class members’ claims must “depend on a common contention.” *Dukes*, 564 U.S. at 350. “What matters to class certification . . . is not the raising of common ‘questions’—even in droves—but rather, the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation.”

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Id. “[E]ven a single [common] question will do.” *Id.* at 359 (internal quotation marks omitted). Thus, Rule 23(a)(2) requires not just a common question, but one that is “capable of classwide resolution.” *Alcantar v. Hobart Serv.*, 800 F.3d 1047, 1052 (9th Cir. 2015).

Where “[a plaintiff’s] theory of liability [is that the defendant] ha[d] a uniform policy, and that that policy, measured against wage order requirements, allegedly violate[d] the law—[that theory] is by its nature a common question eminently suited for class treatment.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1033–34 (2012). Here, Plaintiff asserts that the Policy raises common questions of law and fact regarding (1) whether the Policy resulted in employees undergoing security checks off the clock when *entering* the facility to begin work; (2) whether the Policy resulted in employees undergoing security checks off the clock when *leaving* the facility at the end of work; and (3) whether the Policy violates California law. *Class Cert. Mot.* 13:9–15.

Defendant does not dispute that all employees at Clean-In/Clean-Out facilities are subject to the Policy. Instead, it claims that whether the employees were under the control of UPS during the time associated with the security check, such that it should be considered “hours worked,” is not subject to common proof. *See Class Cert. Opp.* 11:2–3. For example, Defendant asserts that the Court will be required to examine—for each employee, and on each day of work—whether the employee could choose when to arrive and when to leave, whether the employee could engage in personal activities before, during, and after the security checks, whether the employee was subject to a metal detector or hand wand, and what the employee was actually doing while waiting in line or going through security check. *Id.* 11:4–12:9.

The Court concludes that Plaintiff has provided sufficient evidence of the existence of a company-wide security check policy. The testimony of UPS’s corporate designated witnesses, testimony of Plaintiff, declarations of putative class members, and policy documents all reflect that employees at secured facilities are subject to security checks at least twice per workday. The time associated with the security checks was *always* off-the-clock, because the time entry terminals were not placed in the security areas and the security areas were either at the edge of the facility building or in a separate guardhouse outside the building. Given this evidence, the Court finds that whether the time spent on security checks is considered “hours worked” is a common question that can be resolved as to all class members. A number of courts facing facts substantially similar to this case have likewise found that the commonality requirement has been satisfied. *See, e.g., Hamilton v. Wal-Mart Stores, Inc.*, No. EDCV 17-1415 AB (KKx), 2018 WL 4813082, at *5 (C.D. Cal. Aug. 21, 2018); *Greer v. Dick’s Sporting Goods, Inc.*, No. 2:15-

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cv-01063-KJM-CKD, 2017 WL 1354568, at *5–7 (E.D. Cal. Apr. 13, 2017); *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 576–77 (C.D. Cal. 2008).

Further, the various factors that Defendant has listed to do not render whether employees are subject to the control of UPS an individualized inquiry. Instead, those factors go either to the merits of Plaintiff’s claim or to individual damages. For instance, Defendant has pointed to declarations of numerous employees stating that they engage in personal activities before, during, and after the security checks. *See, e.g., Declaration of Anthony Pereira, Def. Compendium*, Ex. 3-W, ¶ 18 (“After I have entered the facility and passed through the metal detector, I engage in some personal activities before beginning work, for instance, I . . . put away my belongings, go to the restroom, eat a snack, or talk to coworkers[.]”); *Declaration of Josefina Bonilla, Def. Compendium*, Ex. 3-F, ¶ 10 (“When I have to wait for my friend, I clock out and go to the break area to wait for my friend.”); *Declaration of Francis Atendido, Def. Compendium*, Ex. 3-D, ¶ 10 (“While in line, . . . I would sometimes listen to music on my phone, talk with other employees or mess around on my phone while I waited.”). However, while this evidence is certainly relevant to the merits of Plaintiff’s claim that employees were under control of UPS before, during, and after the security checks, they do not suggest that policy was not consistently applied. Further, the factual differences in the way that each facility conducts the security checks—for instance, whether each employee was subject to a metal detector or a hand wand or how much time each class member spent waiting for and undergoing security checks—speak to variations in individual damages, not to whether the employees were subject to a common policy.

Defendant further contends that commonality is not satisfied because, even if the Court determines that some or all of the time at issue meets the standard for compensable work, it would need to decide whether the amount of time an employee spent nonetheless falls within the *de minimis* exception, which permits “insubstantial or insignificant periods of time beyond the scheduled working hours to be disregarded.” *See Class Cert. Opp.* 12:10–13:6; *Corbin v. Time Warner Entm’t-Advance/Newhouse P’ship*, 821 F.3d 1069, 1080–81 (9th Cir. 2016). However, the Ninth Circuit recently held that, under California Supreme Court’s decision in *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (Cal. 2018), “the federal *de minimis* doctrine does not apply to wage and hour claims brought under the California Labor Code.” *Rodriguez v. Nike Retail Servs.*, ___ F.3d ___, 2019 WL 2701332, at *4 (9th Cir. June 28, 2019). *Rodriguez*, like in this case, involved a class action seeking compensation for off-the-clock exit inspections employees undergo every time they leave the store. *Id.*, at *1. The district court granted summary judgment in the defendant’s favor, ruling that the plaintiff’s claims were barred by the *de minimis* doctrine based on an expert study showing that an average inspection took between 16.9 and 20.2

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seconds, and that the median inspection took 4.7 seconds. *Id.*, *2–3. The Ninth Circuit reversed, holding that “where employees are required to work for more than trifling amounts of time ‘on a regular basis or as a regular feature of the job,’ . . . , *Troester* precludes an employer from raising a *de minimis* defense under California law.” *Id.*, at *6. Given this precedent, the Court concludes that the *de minimis* doctrine does not apply here and is not relevant to the commonality analysis.

In sum, the Court finds that the Security Check Class meets the commonality requirement because it poses common questions of fact and law that are capable of classwide resolution.

b. Predominance

The Rule 23(b)(3) predominance inquiry “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). “Predominance is a qualitative rather than a quantitative concept. It is not determined simply by counting noses: that is, determining whether there are more common issues or more individual issues, regardless of relative importance.” *Parko v. Shell Oil Co.*, 739 F.3d 1083, 1085 (7th Cir. 2014). The predominance inquiry is “far more demanding” than the commonality requirement of Rule 23(a). *See Amchem*, 521 U.S. at 623–24. Although a court may compare the number of uncommon questions to the number of common ones as a proxy for predominance, the court must ultimately assess the significance of the uncommon questions in the overarching dispute and the ability to manage a trial of common claims. *See id.* “Implicit in the satisfaction of the predominance test is the notion that the adjudication of common issues will help achieve judicial economy.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996).

In *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013), the Supreme Court held that a court can certify a Rule 23(b)(3) class only if the plaintiff can establish that “damages are capable of measurement on a classwide basis.” *Id.* at 36–38. The Ninth Circuit has clarified that while “some” individualized calculations do not defeat predominance, the plaintiff must still show that “the whole class suffered damages traceable to the same injurious course of conduct underlying the plaintiff’s legal theory.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1120–21 (9th Cir. 2017). Therefore, “[u]ncertainty regarding class members’ damages does not prevent certification of a class as long as valid method has been proposed for calculating those damages.” *Lambert v. Nutraceutical Corp.*, 870 F.3d 1170, 1182 (9th Cir. 2017), *rev’d and remanded on other grounds*, 139 S. Ct. 710 (2019).

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Here, Plaintiff proposes that the damages for the off-the-clock work from security checks be calculated by conducting a survey of former and current employees of Defendant. *Class Cert. Reply* 6:2–5. She has retained an expert, Dr. David Lewin, who plans to conduct the survey telephonically or by mail. *Plaintiff’s Class Action Trial Plan*, Dkt. # 84-1 (“*Trial Plan*”), 3:5–6. The survey will gather several types of information, including security check frequency, wait times, inspection times, and travel times that elapsed while class members were not clocked in for work, which will then allow Lewin to determine the class members’ off-the-clock times to a high degree of statistical certainty. *See id.* 9:11–22. The survey results will then be combined with daily timekeeping records and historical compensation records to determine the amount of any unpaid wages. *Id.* 9:22–24.

The problem with Plaintiff’s proposal is that her survey is nonexistent. Her expert has neither formulated nor administered a survey, analyzed the results, or prepared a report. *See Defendant’s Response and Objection to Plaintiff’s Trial Plan*, Dkt. # 92-1 (“*Trial Plan Obj.*”), 6:19–21. Instead, she asks the Court to (1) extend the discovery cut-off, (2) extend the expert discovery cut-off, (3) extend expert disclosure, and (4) extend the deadline to file dispositive motions, to give Plaintiff’s expert more time to complete the survey and prepare a report. *See Trial Plan* 2:10–11; 3:11–14.

The Court’s Order for Jury Trial cautions the parties that “[a]ll discovery shall be complete by the discovery cut-off date specified in the Scheduling Order.” *See* Dkt. # 34, at 2:2–4. According to the Court’s Scheduling Order, discovery ended on May 20, 2019. *See* Dkt. # 33. There is no justification for modifying the scheduling order now, and Plaintiff has not provided one. Instead, Plaintiff should have completed the survey and produced the report *at the time she filed the motion for class certification*.

Since Plaintiff has no damages model prepared, any efforts to assess damages for the Security Check Class will have to involve extensive individualized inquiries into each member’s claim. Without a manageable method to calculate damages, Plaintiff has failed to show that common questions of law and fact will predominate over other individualized inquiries in this case. Therefore, the Security Check Class fails to meet the predominance requirement under Rule 23(b)(3).

c. Conclusion

The Court **DENIES** class certification of the Security Check Class for failing to meet the Rule 23(b)(3) predominance requirement.

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B. Meal Break Class

The California Labor Code requires employers to provide meal periods of not less than thirty minutes if an employee works for more than five hours per day. Cal. Lab. Code § 512(a). However, if an employee works no more than six hours, the employer and employee may mutually consent to waiving the meal period. *Id.* Moreover, an employer may not have an employee work for more than ten hours without providing a second thirty-minute meal period, except if the total hours worked are no more than twelve hours, the second meal period may be waived by mutual consent only if the first meal period was not waived. *Id.* If an employer fails to provide an employee a meal period, the employer is required to pay a meal premium. *Id.* § 226.7.

An employer satisfies its obligations to provide meal periods if it “relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does . . . not impede or discourage them from doing so.” *Brinker*, 53 Cal. 4th at 1040. However, it is “not obligated to police meal periods and ensure no work thereafter is performed.” *Id.*

Here, Plaintiff asserts that UPS has failed to provide its employees with the requisite meal periods because (1) UPS schedules a large portion of its workforce in shifts less than five hours even though it knows or should know that these employees may work more than five hours despite the schedule and (2) UPS has its employees sign an unlawful prospective meal waiver. *Class Cert. Mot.* 18:18–19.

Before the Court analyzes whether the Meal Period Class should be certified, it takes a detour to consider Defendant’s motion to strike Plaintiff’s expert.

i. Defendant’s Motion to Exclude Plaintiff’s Expert

In support of her motion for class certification, Plaintiff has submitted declarations of her purported expert Eric R. Lietzow, who was retained to tabulate UPS’s payroll records on Plaintiff’s behalf. *See Declaration of Eric Lietzow*, Dkt. # 72-6; *Supplemental Declaration of Eric Lietzow*, Dkt. # 93-2. Defendant asserts that these declarations are inadmissible under Rule 702 of the Federal Rules of Evidence. *See generally Exclude Mot.*

Under Ninth Circuit precedent, the Court cannot simply exclude Lietzow’s declarations for not meeting the admissibility standards under Rule 702, because “[i]nadmissibility alone is

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not a proper basis to reject evidence submitted in support of class certification.” *See Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1004 (9th Cir. 2018). Instead, the admissibility of an expert testimony “should go to the weight that evidence is given at the class certification stage.” *Id.* As such, Defendant’s motion to exclude Lietzow is **DENIED**.

Nevertheless, having reviewed the moving papers, the Court ultimately does not find Lietzow’s declarations helpful in deciding this motion. Plaintiff retained Lietzow to tabulate UPS’s timekeeping and payroll data for a 1 percent sampling of all putative class members. *See Exclude Opp.* 8:20–9:8. His findings are proffered to corroborate Plaintiff’s theory of liability for the Meal Break Class.³ According to Plaintiff, Lietzow’s findings show that (1) the recorded shifts lengths conform to Defendant’s five-hour shift scheduling practice and (2) the shifts covered by Defendant’s waiver lacked recorded meal periods. *See id.* 12:10–15. Further, Lietzow’s findings supposedly demonstrate the overall extent to which class members did not record complete meal periods. *See id.* However, even if the Court were to accept Lietzow’s findings as true, there still remain numerous individualized inquiries to determine whether UPS is actually liable for missed meal periods. The Court addresses this issue below.

ii. Commonality and Predominance

Because Plaintiff’s challenges to UPS’s shift-scheduling policy and meal waivers both involve UPS’s overarching company policies, the Court is satisfied that she has raised common questions of law and fact. Whether those questions predominate is a different story.

First, Plaintiff admits that a policy that schedules part-time employees to work less than five-hour shifts is facially lawful. *See Class Cert. Reply* 8:9–10. (“Plaintiff does not contend that UPS’s part-time scheduling policy is facially unlawful . . .”). The only evidence Plaintiff has put forward to show that this lawful policy led to unlawful outcomes is Lietzow’s finding that a large percentage of UPS’s employees did not have recorded meal periods. To determine whether these missed meal periods were in fact *violations*, the Court would still need to answer a number of questions on an individual-by-individual, day-by-day basis: Was a meal period required on that particular day? Was the employee given an opportunity to take a meal period? Did UPS impede, discourage, or prohibit the employee from taking the meal period? Did the employee waive his meal period through a written waiver or otherwise? And if the employee

³ Plaintiff asked Lietzow to provide an analysis only of what UPS’s time records and payroll data show, not to opine on whether UPS actually committed meal period violations. *See Exclude Opp.* 1:19–26.

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missed a meal period but did not waive it, did UPS subsequently pay that employee a meal period premium? *See Class Cert. Opp.* 20:15–21:4. As the Court discussed in *Sali v. Universal Health Services of Rancho Springs*, in the absence of a uniform unlawful policy, “[r]ecords alone showing that [employees] missed or cut short meal breaks on certain days is not enough to demonstrate meal break violations.” No. CV 14-985 PSG (JPRx), 2015 WL 12656937, at *8 (C.D. Cal. June 3, 2015).

Plaintiff’s allegation that the prospective waiver violated the California Labor Code suffers from the same defect. Even if the Court ultimately finds that the waivers are invalid, the Court will still need to engage in individualized analyses to determine UPS’s liability as described above.

Because Plaintiff’s proposed Meal Period Class cannot meet the predominance requirement, the Court **DENIES** class certification.

C. Derivative Claims

Because the Court has denied class certification for both the Security Check Class and the Meal Break Class, it also **DENIES** certification of the derivative claims.

D. Conclusion

Plaintiff’s motion for class certification is **DENIED**.

III. Plaintiff’s Motion to Amend the Complaint

A. Legal Standard

“Generally, [Federal Rule of Civil Procedure] 15 advises the court that ‘leave shall be freely given when justice so requires.’ This policy is ‘to be applied with extreme liberality.’” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (per curiam) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)). Factors such as “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment” may be considered in making this determination. *Id.* at 1052 (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)); *see*

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also Nat'l Council of La Raza v. Cegavske, 800 F.3d 1032, 1041–42 (9th Cir. 2015). Of these factors, prejudice to the opponent carries the most weight. *Eminence Capital*, 316 F.3d at 1052.

Once a court enters a pre-trial scheduling order, however, motions for leave to amend the pleadings are governed by Federal Rule of Civil Procedure 16. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607–08 (9th Cir. 1992). Under Rule 16, a party seeking to amend a pleading after the date specified in a scheduling order must first show “good cause” for modifying the scheduling order. *Id.* at 609. “Unlike Rule 15(a)’s liberal amendment policy which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” *Id.* Although prejudice to the opposing party may serve as an additional basis to deny a motion, “the focus of the inquiry is upon the moving party’s reasons for seeking modification.” *See id.*

B. Discussion

Plaintiff seeks leave to amend the scheduling order and amend her complaint (1) to add Cody Ells and Arturo Flores as additional named plaintiffs, (2) to add a new cause of action for civil penalties under the Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 et seq., brought by Ells and Flores, and (3) to add a new cause of action for failure to timely pay wages upon termination brought by Plaintiff. *Leave Mot.* 3:9–26. Plaintiff notes that her amended complaint would not add Ells or Flores as proposed class representatives. *Id.* 3:28–4:2.

Because the Court entered a pre-trial scheduling order on September 12, 2018, Plaintiff must show “good cause” for modifying the scheduling order and allowing the proposed amendment. *See Johnson*, 975 F.2d at 607–08. In determining whether Plaintiff has shown good cause, the Court looks primarily at whether she was diligent in seeking the amendment, but also considers the potential prejudice the amendment would pose to Defendant. *See id.* The Court addresses each of Plaintiff’s requested amendments in turn.

i. *Request to Add Cody Ells and Arturo Flores as Named Plaintiffs and Their PAGA Claim*

Plaintiff contends that her request for leave to add proposed plaintiffs Ells and Flores and their claim for civil penalties under PAGA has been diligently made because Ells and Flores did not retain Plaintiff’s counsel until December 2018—two months after the deadline to add parties and amend pleadings had passed. *Leave Mot.* 5:6–12. Plaintiff further claims that she could not

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have moved for leave to amend earlier because Ells and Flores were required to submit notices to the LWDA, which they did on January 3, 2019, and wait 65 days until March 10, 2019 for a response before they were authorized under state law to bring their PAGA claim. *See id.* 5:13–15; Cal. Lab. Code § 2699.3.

Even if the Court were to accept Plaintiff’s contention that she was diligent in bringing her request, it finds that allowing Plaintiff to amend sixteen months after filing the original complaint and only two months before trial would unduly prejudice Defendant. The amendment would require discovery to be reopened, so that UPS can depose Ells and Flores, and the trial to be delayed.⁴

Therefore, Plaintiff’s proposed amendments to add Ells and Flores as plaintiffs and add a PAGA claim are **DENIED**.

ii. Request to Add the Waiting Time Claim by Plaintiff

Plaintiff asserts that at the time of her initial complaint, Plaintiff was a current employee and therefore did not have standing to bring a claim for failure to timely pay wages upon termination. *Leave Mot.* 8:22–24. Because Plaintiff is now a former employee, she asks for leave to amend to add the waiting time penalties claim. *Id.*

Yet Plaintiff’s employment with Defendant terminated back in May 2018. *Coates Decl.* ¶ 2. Plaintiff could have added the claim for waiting time penalties over a year ago, which also would have been well within the deadline to amend the complaint. *See* Dkt. # 33 (ordering that the last day to add parties and amend pleadings is October 17, 2018). Plaintiff does not provide any explanation for her delay in seeking the amendment. Because Plaintiff was not diligent in adding the waiting time penalties claim, the Court **DENIES** her request.

⁴ Plaintiff asserts that Defendant is “less prejudiced by the amendment than it would be if [Ells and Flores] filed a separate lawsuit,” because the new claims are “entirely predicated on the same facts pleaded in this action.” *Leave Mot.* 5:24–6:2; *see also Leave Reply* 4:20–5:8. The Court is skeptical of Plaintiff’s contention that she somehow knows better than UPS which course of action would be more prejudicial.

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iii. Conclusion

Plaintiff's motion for modification of the scheduling order and leave to file an amended complaint is **DENIED**.

IV. Conclusion

For the foregoing reasons:

- Plaintiff's motion for class certification is **DENIED**;
- Defendant's motion to exclude Plaintiff's expert Eric Lietzow is **DENIED**; and
- Plaintiff's motion for modification of the scheduling order and leave to file an amended complaint is **DENIED**.

IT IS SO ORDERED.