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 KENTUCKY CORPORATION

9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 KAYLA MILLIGAN, and on behalf
 of all others similarly situated,

13
 14 Plaintiffs,

15 v.

16 CWI, INC. d/b/a
 17 CAMPINGWORLD, a Kentucky
 Corporation, and DOES 1 through
 18 50, inclusive,

19 Defendants.

Case No. 5:20-cv-01847

**DEFENDANT’S NOTICE OF
 REMOVAL OF CIVIL ACTION TO
 FEDERAL COURT**

[28 U.S.C. §§ 1332, 1441, & 1446]

Complaint filed: July 8, 2020
 (San Bernardino Superior Court,
 Case No. CIVDS2013999)

Trial Date: None Set

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
2 **CENTRAL DISTRICT OF CALIFORNIA, PLAINTIFF KAYLA MILLIGAN,**
3 **AND HER ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE** that Defendant CWI, INC. d/b/a
5 CAMPINGWORLD, a Kentucky Corporation (“Defendant”) removes the above-
6 captioned action from the Superior Court of the State of California, County of San
7 Bernardino, to the United States District Court, Central District of California, pursuant
8 to 28 U.S.C. sections 1332(d) (Class Action Fairness Act of 2005), 1441(b), and 1446
9 on the following grounds:

10 **I. STATEMENT OF JURISDICTION**

11 1. This Court has original jurisdiction over this action pursuant to the Class
12 Action Fairness Act of 2005 (“CAFA”), which vests the United States district courts
13 with original jurisdiction of any civil action: (a) that is a class action with a putative
14 class of more than a hundred members; (b) in which any member of a class of
15 plaintiffs is a citizen of a state different from any defendant; and (c) in which the
16 matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest
17 and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in
18 accordance with United States Code, title 28, section 1446. As set forth below,
19 this case meets all of CAFA’s requirements for removal and is timely and properly
20 removed by the filing of this Notice.

21 **II. VENUE**

22 2. This action was filed in the Superior Court for the State of California,
23 County of San Bernardino. Accordingly, venue property lies in the United States
24 District Court for the Central District of California, Eastern Division, pursuant to 28
25 U.S.C. sections 84(c), 1391, 1441, and 1446. Further, Plaintiff alleges the operative
26 acts took place in San Bernardino County. *See* Declaration of Rebecca Aragon
27 (“Aragon Decl.”) ¶ 2, Exh. A (Plaintiff’s Complaint), ¶¶ 3-6.

28

1 **III. PLEADINGS, PROCESS, AND ORDERS**

2 3. On July 8, 2020, Plaintiff Kayla Milligan (“Plaintiff”) filed a Class
3 Action Complaint against Defendant in San Bernardino Superior Court, titled: *KAYLA*
4 *MILLIGAN, and on behalf of all others similarly situated, v. CWI, INC., and DOES 1-*
5 *50, inclusive*, bearing Case No. CIVDS2013999 (the “Complaint”). The Complaint
6 asserts the following six causes of action: (1) Failure to Pay Wages; (2) Failure to
7 Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Pay Timely
8 Wages; (5) Failure to Provide Accurate Itemized Wage Statements; and (6) Violation
9 of California Business & Professions Code §§ 17200, *et seq.* See Aragon Decl. ¶ 2,
10 Exh. A, Complaint.

11 4. On August 10, 2020, Defendant was served with the Complaint,
12 Summons, Certificate of Assignment, Civil Case Cover Sheet, Internal Case
13 Management Conference Order, Initial Complex Order and Guidelines, Guidelines for
14 the Complex Litigation Program. True and correct copies of the (1) Complaint, (2)
15 Summons, (3) Certificate of Assignment, (4) Civil Case Cover Sheet, (5) Internal
16 Case Management Conference Order, (6) Initial Complex Order and Guidelines, and
17 (7) Guidelines for the Complex Litigation Program are attached to the Declaration of
18 Rebecca Aragon in Support of Defendant’s Notice of Removal, are filed concurrently
19 herewith. See Aragon Decl. ¶ 2, Exh. A.

20 5. On September 4, 2020, Defendant filed its Answer in the Superior Court
21 of the State of California, County of San Bernardino. See Aragon Decl. ¶ 4, Exh. C.

22 6. As of the date of this Notice of Removal, Defendant is unaware of any
23 other parties who have been named or served with the Summons and Complaint in
24 this action. See Aragon Decl. ¶ 5.

25 7. Pursuant to 28 U.S.C. § 1446(d), the attached Exhibits A and B constitute
26 all process, pleadings and orders served on Defendant or filed or received by
27 Defendant in this action. To Defendant’s knowledge, no further processes, pleadings,
28 or orders related to this case have been filed in San Bernardino Superior Court or

1 served by any party. Additionally, to Defendant's knowledge, no proceedings or
2 future hearings related hereto have been heard in San Bernardino Superior Court.
3 Attached as Exhibit "B" to Rebecca Aragon's Declaration is a true and correct copy of
4 the San Bernardino County Superior Court's docket to date reflecting all processes,
5 pleadings, and orders served on Defendant or filed with the Court in this action. *See*
6 Aragon Decl. ¶ 6, Exh B.

7 **IV. TIMELINESS OF REMOVAL**

8 8. An action may be removed from state court by filing a notice of removal,
9 together with a copy of all process, pleadings, and orders served on the Defendant
10 within 30 days of service on defendant of the initial pleading. *See* 28 U.S.C.
11 § 1446(b); *Murphy Bros., Inc. v. Mitchetti Pipe Stringing, Inc.*, 526 U.S. 344, 354
12 (1999) (the 30-day removal period runs from the service of the summons and
13 complaint).

14 9. Here, the removal of this action is timely because Defendant filed this
15 Notice of Removal within thirty (30) days from August 10, 2020, when Defendant
16 was served with the Summons and Complaint, and within one year from the
17 commencement of this action. 28 U.S.C. § 1446(b), (c) (1); *See* Aragon Decl. ¶¶ 2-4.

18 **V. NOTICE OF REMOVAL TO ADVERSE PARTY AND STATE COURT**

19 10. Contemporaneously with the filing of this Notice of Removal in the
20 United States District Court for the Central District of California, a true and correct
21 copy of this Notice will be provided to Plaintiff's counsel of record, James R.
22 Hawkins and Samantha A. Smith of James Hawkins APLC, 9880 Research Drive,
23 Suite 200, Irvine, CA 92618, Plaintiff's counsel of record. *See* Aragon Decl. ¶ 7, Exh.
24 D. In addition, a copy of this Notice of Removal will be filed with the Clerk of the
25 Superior Court of the State of California, County of San Bernardino. *Id.*

26 **VI. REMOVAL JURISDICTION UNDER CAFA**

27 11. CAFA grants United States district courts original jurisdiction over:
28 (a) civil class action lawsuits filed under federal or state law; (b) where the alleged

1 class is comprised of at least 100 individuals; (c) in which any member of a class of
2 plaintiffs is a citizen of a state different from any defendant; and (d) where the
3 matter's amount in controversy exceeds \$5,000,000, exclusive of interest and costs.
4 *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in accordance
5 with 28 U.S.C. § 1446. As set forth below, this case meets each CAFA requirement
6 for removal, and is timely and properly removed by the filing of this Notice of
7 Removal.

8 **A. Plaintiff Filed A Class Action Under State Law**

9 12. Plaintiff filed her action as a class action based on alleged violations of
10 California state law. *See* Complaint, ¶¶ 37-72.

11 **B. The Proposed Class Contains At Least 100 Members**

12 13. CAFA provides this Court with jurisdiction over a class action when “the
13 number of members of all proposed plaintiff classes in the aggregate [is not] less than
14 100.” 28 U.S.C. § 1332(d)(5)(B). CAFA defines “class members” as those “persons
15 (named or unnamed) who fall within the definition of the proposed or certified class in
16 a class action.” 28 U.S.C. § 1332(d)(1)(D). This requirement is easily met in this case.

17 14. As an initial matter, Plaintiff alleges in her Complaint that “[w]hile the
18 exact number of Class Members is unknown to the Plaintiff at this time, Plaintiff is
19 informed and believe [sic] and thereon alleges that there are *at least 100* (one
20 hundred) Class Members. *See* Complaint, ¶ 13 (emphasis added).

21 15. Additionally, Defendant's internal records demonstrate that there are well
22 over 100 putative class members in this case. *See* Declaration of Brent Moody in
23 Support of Defendant's Removal of Civil Action to Federal Court (hereinafter
24 “Moody Decl.”), ¶ 3.

25 16. Here, Plaintiff filed this action on behalf of herself and “[a]ll persons
26 who are or have been employed by Defendants as non-exempt employees or
27 equivalent positions, however titled, in the state of California within four (4) years
28

1 from the filing of the Complaint in this action until its resolution.” Complaint, ¶ 8.¹

2 17. According to the class definition, and based on a review of Defendant’s
3 records from someone with personal knowledge of Defendant’s record keeping
4 practices, Defendant can confirm that it employed no fewer than 477 hourly,
5 nonexempt employees working in its California locations during the putative class
6 period of July 8, 2016 to the present. *See* Moody Decl. ¶ 3.

7 **C. Defendant Is Not A Governmental Entity**

8 18. Under 28 U.S.C. § 1332(d)(5)(A), CAFA does not apply to class actions
9 where “primary defendants are States, State officials, or other governmental entities
10 against whom the district court may be foreclosed from ordering relief.”

11 19. Here, Defendant is a private business entity, and is not a state, state
12 official, or other government entity exempt from CAFA. Moody Decl., ¶ 9.

13 **D. There Is Diversity Between At Least One Class Member And One**
14 **Defendant**

15 20. CAFA’s minimal diversity requirement is satisfied, *inter alia*, when “any
16 member of a class of plaintiffs is a citizen of a State different from any defendant.”
17 28 U.S.C. §§ 1332(d)(2)(A), 1453(b). In a class action, only the citizenship of the
18 named parties is considered for diversity purposes, and not the citizenship of the class
19 members. *Snyder v. Harris*, 394 U.S. 332, 340 (1969). Additionally, for removal
20 purposes, diversity must exist both at the time the action was commenced in state
21 court and at the time of removal. *See Strotek Corp. v. Air Trans. Ass’n of Am.*,
22 300 F.3d 1129, 1130-1131 (9th Cir. 2002). Minimal diversity of citizenship exists
23 here because Plaintiff and Defendant are citizens of different states.

24 21. For diversity purposes, a person is a “citizen” of the state in which she is
25

26 ¹ Defendant disputes that Plaintiff is able to represent these employees on a class
27 basis, particularly those who worked in different job classifications and facilities than
28 Plaintiff. This Notice of Removal assumes Plaintiff’s class definition as set forth in
the Complaint for purposes of removal, but Defendant does not concede that such a
class definition is appropriate in this case.

1 domiciled. *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir.
2 1983); *see also Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)
3 (confirming that person’s domicile is the place she resides with the intention to
4 remain). Furthermore, allegations of residency in a state court complaint create a
5 rebuttable presumption of domicile supporting diversity of citizenship. *Lew v. Moss*,
6 797 F.2d 747, 751 (9th Cir. 1986); *see also State Farm Mut. Auto. Ins. Co. v. Dyer*, 19
7 F.3d 514, 519 (10th Cir. 1994) (allegation by party in state court complaint of
8 residency “created a presumption of continuing residence in [state] and put the burden
9 of coming forward with contrary evidence on the party seeking to prove otherwise”);
10 *Smith v. Simmons*, No. 1:05-CV-01187-OWW-GSA, 2008 WL 744709, at *7 (E.D.
11 Cal. Mar. 18, 2008) (finding a place of residence provides “‘prima facie’ case of
12 domicile”).

13 **a. Plaintiff is a citizen of California**

14 22. In the instant action, Plaintiff has at all times been a resident of
15 California. Plaintiff specifically states that she “was at all times relevant to this action,
16 a resident of California.” *See* Complaint, ¶ 5. Defendant has thus established by a
17 preponderance of the evidence that Plaintiff resides and is domiciled in California, and
18 is, thus, a citizen of California. *See id.*; *Lew*, 797 F.2d at 751; *Smith*, 2008 WL
19 744709, at *7; *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 519-20 (10th Cir.
20 1994) (allegation by party in state court complaint of residency “created a
21 presumption of continuing residence in [state] and put the burden of coming forward
22 with contrary evidence on the party seeking to prove otherwise”); *Smith v. Simmons*,
23 2008 U.S. Dist. LEXIS 21162, *22 (E.D. Cal. 2008) (place of residence provides
24 “prima facie” case of domicile).

25 **a. Defendant is not a citizen of California**

26 23. Defendant is not a citizen of California. Defendant is and was, when this
27 action was filed and at the time of its removal, a corporation incorporated under the
28 laws of the State of Kentucky. *See* Moody Decl. ¶10. Defendant maintains its

1 principal place of business at 650 Three Springs Road in Bowling Green Kentucky,
2 which is where the corporate headquarters are located, and where Defendant’s
3 corporate books are maintained. Defendant’s executive and administrative offices are
4 also located in Kentucky. *Id.*; 28 U.S.C. § 1332(c)(1) (“a corporation shall be deemed
5 to be a citizen of every State and foreign state by which it has been incorporated and
6 of the State or foreign state where it has its principal place of business”). Thus,
7 Defendant is not a citizen of the State of California.

8 24. The presence of Doe defendants in this case has no bearing on diversity
9 with respect to removal. *See* 28 U.S.C. § 1441(b)(1) (“In determining whether a civil
10 action is removable on the basis of the jurisdiction under section 1332(a) of this title,
11 the citizenship of defendants sued under fictitious names shall be disregarded.”).

12 25. Accordingly, the named Plaintiff is a citizen of the State of California,
13 while Defendant is a citizen of the State of Kentucky. Therefore, complete diversity
14 exists for purposes of CAFA jurisdiction because the named parties are citizens of
15 different states. *See* 28 U.S.C. §§ 1332(d)(2)(A), §1453.

16 **E. The Amount In Controversy Exceeds \$5,000,000²**

17 26. This Court has jurisdiction under CAFA, which authorizes the removal
18 of class actions in which, among the other factors mentioned above, the amount in
19 controversy for all class members exceeds \$5,000,000. 28 U.S.C. § 1332(d).

20 27. The Supreme Court, in *Dart Cherokee Basin Operating Co. v. Owens*,
21 135 S. Ct. 547 (2014), recognized that “as specified in § 1446(a), a defendant’s notice
22 of removal need include only a plausible allegation that the amount in controversy
23 exceeds the jurisdictional threshold.” *Id.* at 554. Only if the plaintiff contests or the
24 court questions the allegations of the notice of removal is supporting evidence
25 required. *Id.* Otherwise, “the amount-in-controversy allegation of a defendant seeking

26 _____
27 ² The alleged damages calculations contained herein **are for purposes of removal**
28 **only**. Defendant denies that Plaintiff or the putative class are entitled to any relief
whatsoever and expressly reserves the right to challenge Plaintiff’s alleged damages in
this case.

1 federal-court adjudication should be accepted” just as a plaintiff’s amount-in-
2 controversy allegation is accepted when a plaintiff invokes federal court jurisdiction.
3 *Id.* at 549-50.

4 28. “The claims of the individual class members shall be aggregated to
5 determine whether the matter in controversy exceeds” the jurisdictional minimum. 28
6 U.S.C. § 1332(d)(6). “In measuring the amount in controversy, a court must assume
7 that the allegations of the complaint are true and that a jury will return a verdict for the
8 plaintiff on all claims made in the complaint.” *Kenneth Rothschild Trust v. Morgan*
9 *Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002).

10 29. For purposes of determining whether a defendant has satisfied the
11 amount in controversy requirement, the Court must presume that the Plaintiff will
12 prevail on her claims. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*,
13 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (citing *Burns v. Windsor Ins. Co.*, 31 F.
14 3d 1092, 1096 (11th Cir. 1994) (stating that the amount in controversy analysis
15 presumes that “plaintiff prevails on liability”) (other internal citation omitted)).
16 The ultimate inquiry is what amount is put “in controversy” by plaintiff’s complaint,
17 not what defendant might actually owe. *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d
18 982, 986 (S.D. Cal. 2005); *accord Ibarra v. Manheim Inv., Inc.* 775 F.3d 1193, 1198
19 n.1 (9th Cir. 2015) (explaining that even when the court is persuaded the amount in
20 controversy exceeds \$5,000,000, defendants are still free to challenge the actual
21 amount of damages at trial because they are only estimating the amount in
22 controversy); *Schere v. Equitable Life Assurance Soc’y of the U.S.*, 347 F.3d 394, 399
23 (2d Cir. 2003) (recognizing that the ultimate or provable amount of damages is not
24 what is considered in the removal analysis; rather, it is the amount put in controversy
25 by the plaintiff’s complaint); *Patel v. Nike Retail Servs.*, 58 F. Supp. 3d 1032, 1040
26 (N.D. Cal. 2014) (“But a defendant is not required to admit, and is certainly not
27 required to prove, the truth of plaintiff’s assertions before invoking diversity
28 jurisdiction.”).

1 30. Defendant denies the validity and merit of Plaintiff’s claims, the legal
2 theories they are based upon, and Plaintiff’s request for monetary and other relief.
3 For purposes of removal, however, and without conceding that Plaintiff or the putative
4 class is entitled to any damages or penalties whatsoever, it is apparent that the
5 aggregated claims of the putative class establishes, by a preponderance of evidence,
6 that the amount in controversy exceeds the jurisdictional minimum of \$5,000,000.

7 31. Plaintiff asserts six causes of action on behalf of a class of all current and
8 former non-exempt employees of Defendants in the State of California. *See generally*
9 *Complaint*. In her Prayer for Relief, Plaintiff seeks damages including general and
10 special damages and statutory penalties; compensation for unpaid wages and benefits;
11 interest; and attorneys’ fees and costs. *See Complaint, Prayer for Relief ¶¶ 1-12.*

12 32. Based on the face of Plaintiff’s *Complaint*, the \$5 million jurisdictional
13 threshold is easily met.

14 **a. There Is Over \$690,000 In Controversy Based On**
15 **Plaintiff’s Failure To Pay All Lawful Wages Claim.**

16 33. In her First Cause of Action, Plaintiff alleges that “Defendants did not
17 compensate Plaintiff and class members one additional hour of pay at their regular
18 rate as required by California law, including Labor Code section 226.7 and the
19 applicable IWC wage order, for each day on which lawful meal periods and rest
20 breaks were not authorized and permitted. As a result, Plaintiff and class members
21 were not paid all lawful wages, including minimum wages...” *Complaint, ¶ 42.*

22 34. Although Plaintiff does not allege any factual details for this claim,
23 Plaintiff seeks unpaid wages for “each day on which lawful meal periods and rest
24 breaks were not authorized and permitted” on behalf of every class member as a
25 matter of policy and practice.

26 35. According to Defendant’s records, Defendant employed an estimated 477
27 employees that collectively worked approximately 40,700 workweeks between July 8,
28 2016 and the present per the four-year statute of limitations. *See Cortez, 23 Cal. 4th at*

1 179; Moody Decl. ¶¶ 3, 5. The average hourly wage for employees working in
2 Defendant's California locations is approximately \$17.11 per hour. *Id.* ¶ 4. Applying a
3 conservative assumption that Plaintiff and the putative class seeks only 1 hour per
4 week of wages for off-the-clock work at the average hourly wage of \$17.11 (not
5 duplicative of Plaintiff's overtime claim), then Plaintiff therefore seeks a sum of at
6 least **\$696,307.12** on behalf of the putative class. This amount is calculated as follows:
7 40,700 workweeks x \$17.11 per hour x 1 hour per week.

8 **b. There Is Over \$90,000 In Controversy Based On**
9 **Plaintiff's Overtime Claim.**

10 36. Plaintiff further alleges in her First Cause of Action on behalf of the
11 putative class that "[d]uring the relevant time period, Defendants also failed to pay
12 Plaintiff and Class Members overtime wages at the correct rate due to Defendants'
13 failure to include non-discretionary wages, including, but not limited to, bonuses,
14 commissions, and/or other incentive pay in the computation of their overtime pay,
15 which caused Plaintiff and Class Members to not be paid all overtime wages owed."
16 Complaint, ¶ 43. As such, Plaintiff seeks compensation for Defendant's alleged failure
17 to fully compensate overtime and double time pay.

18 37. California Labor Code § 510 requires that employers pay nonexempt
19 employees one-and-one-half times their regular rate for all hours worked over eight in
20 a day or 40 in a week. Additionally, nonexempt employees must be paid one-and-one-
21 half times their regular rate for the first eight hours worked on the seventh day worked
22 in a single workweek. Employers must also pay double time for all hours worked over
23 12 in a day, and for all hours worked in excess of eight on the seventh consecutive day
24 of work in a single workweek. Cal. Lab. Code § 510(a). The statutory period for
25 recovery under California Labor Code section 510 is calculated under a four-year
26 statute of limitations. *See* Cal. Code Civ. Proc. § 338(a) (setting a three-year period);
27 Cal. Bus. & Prof. Code § 17208 (the three-year statute of limitations can be extended
28 to four years through the pleading of a companion claim under the UCL).

1 38. Plaintiff seeks unpaid overtime wages on behalf of every class member
2 as a matter of policy and practice. To determine the monetary amount in controversy
3 for Plaintiff's overtime claim, the total number of hours worked unpaid by Plaintiff
4 and the putative class that would have been considered overtime hours is multiplied
5 by one and one-half times their respective regular rates of pay rate in effect during the
6 time the overtime was allegedly worked.

7 39. During the relevant time period from July 8, 2016 to the present, Plaintiff
8 worked a total of approximately 132 workweeks, worked an average of .11 hours of
9 overtime and double-time hours per workweek, and received an average weekly sales
10 commission amount of \$3.38 per workweek, and a weekly bonus of \$40.14 for each
11 week that she worked. Moody Decl. ¶8.

12 40. Assuming Plaintiff was not paid any overtime or double-time premiums
13 for the sales bonuses and commission that she received, as alleged in her Complaint,
14 and which Defendant *denies*, Plaintiff was purportedly owed \$2.35 for overtime or
15 double-time premiums per workweek that she worked during the relevant time period.
16 *Id.* ¶ 8.

17 41. Plaintiff is claiming to represent all 477 California nonexempt employees.
18 For the purposes of removal, and as Plaintiff alleges in her Complaint, we will assume
19 that the 477 nonexempt employees were also purportedly not paid overtime and
20 double-time premiums based on any sales bonuses they received. While Defendant
21 *denies* the validity and merit of Plaintiff's overtime claim, for purposes of removal
22 only, Plaintiff's average weekly overtime and double time premiums of \$2.35 per
23 workweek are representative and multiplicative of the 40,700 workweeks at issue.
24 Consequently, the amount in controversy for Plaintiff's overtime claim is at least
25 **\$95,645.00.**³

26
27
28 ³ (Plaintiff's purported \$2.35 of overtime and double-time premiums owed) x (40,700
workweeks) = \$95,645.00.

1 42. In sum, although Defendant vigorously denies Plaintiff's allegations,
2 including the alleged damages, if Plaintiff were to prevail on her overtime claim with
3 respect to herself and the putative class, the amount in controversy with respect to that
4 claim alone could be more than **\$95,645.00**.

5 **c. There Is Over \$6.5 Million In Controversy Based On**
6 **Plaintiff's Meal And Rest Break Claims.**

7 43. Plaintiff alleges in her Second Cause of Action on behalf of the putative
8 class that "Defendants failed to provide Plaintiff and Class Members, timely and
9 uninterrupted meal periods of not less than thirty (30) minutes pursuant to the IWC
10 wage orders applicable to Plaintiff and Class Members' employment by Defendants.
11 As a proximate result of the aforementioned violations, Plaintiff and Class Members
12 have been damaged..." and "Defendants' violations have been *widespread*
13 throughout the relevant period..." Complaint, ¶¶ 48, 50 (emphasis added).

14 44. Plaintiff further alleges that "Despite said requirements of the IWC wage
15 orders applicable to Plaintiff's and Class Members' employment by Defendants,
16 Defendants failed and refused to authorize and permit Plaintiff and Class Members to
17 take ten (10) minute rest periods for every four (4) hours worked, or a major fraction
18 thereof." *Id.* at ¶ 54. Plaintiff additionally contends that "Defendants' violations have
19 been *widespread* throughout the relevant period." *Id.* at ¶55 (emphasis added).

20 45. Based on Defendant's review of records, Defendant employed no fewer
21 than a total of 477 hourly, nonexempt employees working in its California locations
22 during the putative class period of July 8, 2016 to the present. Moody Decl., ¶ 3. The
23 average hourly rate earned by the hourly non-exempt employees who work in the
24 Defendant's California locations is approximately \$17.11 per hour. *Id.* ¶ 4. These
25 employees collectively worked a total of approximately 40,700 workweeks from July
26 8, 2016 through the present. *Id.* ¶ 5.

27 46. As explained above, Plaintiff alleges that "Defendants implemented a
28 policy and practice which resulted in *systematic and class-wide violations* of the

1 Labor Code” that was “*widespread* throughout the relevant period.” For failure to
2 provide meal and rest breaks. Compl. ¶ 50, 55. Plaintiff accordingly asserts a 100%
3 violation rate (*i.e.*, that Defendant would be liable for a meal period violation for each
4 shift that was more than 5 hours; and that Defendant would be liable for a rest period
5 violation for each shift that was more than 4 hours). *See id.*; *see also Duberry v. J.*
6 *Crew Group, Inc.*, Case No. 2:14-cv-08810-SVW-MRW, 2015 U.S. Dist. LEXIS
7 99171, * 7 (C.D. Cal. Jul. 28, 2015) (100% violation rate may be based on allegations
8 of a uniform noncompliant practice).

9 47. If an employer fails to provide an employee a meal or a rest period in
10 accordance with California law, the employer must pay one additional hour of pay at
11 the employee’s regular rate of pay for each workday that the meal or rest period are
12 not provided. Cal. Labor Code, § 226.7.

13 48. Plaintiff’s cause of action for violating the UCL extends the statute of
14 limitations on Plaintiff’s meal and rest break causes of action to four years, back to
15 June 25, 2016. *See* Cal. Bus. & Prof. Code § 17208; *Cortez v. Purolater Air Filtration*
16 *Products Co.*, 23 Cal. 4th 163, 178-79 (2000) (four-year statute of limitations for
17 restitution of wages under the UCL). As such, the class period runs from July 8, 2016
18 through the date of trial.

19 49. Therefore, the potential liability for Plaintiff’s meal break claim for the
20 statutory period of July 8, 2016 through the present, with a conservative estimate of 5
21 meal break violations per week, amounts to approximately **\$3,481,535.59**. This
22 amount is calculated as follows: 47,700 workweeks x 5 meal period violations per
23 week x \$17.11 average meal period penalty per violation.

24 50. Finally, the potential liability for Plaintiff’s rest break claim for the
25 statutory period of July 8, 2016 through the present, with a conservative estimate of 5
26 rest break violations per week, amounts to approximately **\$3,481,535.59**. This amount
27 is calculated as follows: 47,700 workweeks x 5 rest period violations per week x
28 \$17.11 average rest period penalty per violation.

1 51. Accordingly, although Defendant vehemently denies Plaintiff’s
2 allegations, if Plaintiff were to prevail on her meal and rest break claims, the amount
3 in controversy for these two claims would likely be at least **\$6,963,071.19**.

4 **d. There Is Over \$800,000 In Controversy Based On**
5 **Plaintiff’s Waiting-Time Penalties Claim**

6 52. Plaintiff’s Fourth Cause of Action is for statutory waiting-time penalties
7 under California Labor Code sections 201-203. *See* Complaint, ¶¶ 59, 61. Plaintiff
8 contends “[d]uring the relevant time period, Defendants willfully failed and refused,
9 and continue to willfully fail and refuse, to pay Plaintiff and Class Members their
10 wages, earned and unpaid, either at the time of discharge, or within seventy-two (72)
11 hours of their voluntarily leaving Defendants’ employ.” *Id.* at ¶ 60. The statute of
12 limitations for Plaintiff’s Cal. Lab. Code § 203 waiting time penalty claim is three
13 years. *Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1382, 1935 (2010) (“no one
14 disputes that when an employee sues to recover both unpaid final wages and the
15 resulting section 203 penalties, the suit is governed by the same three-year limitations
16 period that would apply had the employee sued to recover only the unpaid wages”).

17 53. Plaintiff demands up to thirty (30) days of pay as penalty for not paying
18 all wages due at time of termination for the putative class. *See* Complaint, ¶¶ 59-61.

19 54. Defendant denies the validity and merit of Plaintiff’s waiting time
20 penalties claim. However, for purposes of removal, based on a preliminary review of
21 its records, Defendant estimates that 205 employees have separated from employment
22 since July 8, 2017. *See* Moody Decl., ¶ 6. The average hourly rate for these terminated
23 non-exempt employees during the class period is \$18.10. *Id.*

24 55. Although Defendant denies Plaintiff’s allegations, including any alleged
25 damages, based on the reasonable assumption that the putative class members would
26 receive waiting time penalties for thirty days, an estimate of the amount in controversy
27 related solely to waiting time penalties is **\$841,727.52**. This amount is calculated as
28 follows: 8 hours/day x 30 days x \$18.10 average hourly rate x 205 employees =

1 \$841,727.52.

2 e. **There Is At Least \$590,000 In Controversy Based On**
 3 **Plaintiff's Wage Statement Penalty Claim.**

4 56. Plaintiff's Fifth Cause of Action is for wage statement penalties under
 5 California Labor Code section 226. *See* Complaint, ¶¶ 62-66. Plaintiff alleges that
 6 "Plaintiff and Class Members have been injured by Defendants' intentional violation
 7 of Labor Code §226(a) because they were denied both their legal right to receive, and
 8 their protected interest in receiving, accurate itemized wage statements under Labor
 9 Code §226(a)." *Id.* at 65. Plaintiff has claimed "Defendants continue to... implement a
 10 uniform set of policies and practices to all non-exempt employees," alleging a 100%
 11 violation rate based on her wage statement claim. *See id.* at ¶¶ 21. Therefore, every
 12 class member would be entitled to wage statement penalties for every pay period from
 13 in the statutory period based on Plaintiff's allegations.

14 57. Section 226 provides for a \$50 penalty for the each pay period in which a
 15 violation occurs, up to \$4,000. California Labor Code section 226 has a one-year
 16 statute of limitations. Cal. Code Civ. Proc., § 340(a).

17 58. Defendant's hourly, non-exempt employees who work in California are
 18 issued wage statements every other week. Moody Decl. ¶ 5. According to Defendant's
 19 records, between July 8, 2019 through the present, Defendant issued approximately
 20 6,070 wage statements to these employees. *Id.* ¶ 7.

21 59. Potential liability for Plaintiff's claim for wage statement penalties
 22 amounts to at least **\$591,500.00**. This amount is calculated as follows: (\$100 penalty x
 23 6,070 wage statements) – (\$50 initial penalty x 310 employees issued wage statements
 24 within the 1 year statute of limitations).⁴

25
 26 ⁴ Because there are approximately 61 weeks (or approximately 30 pay periods)
 27 between July 8, 2019 through September 9, 2020, no individual class member has
 28 reached the \$4,000 maximum on penalties provided for under Labor Code section
 226. (i.e., [(29 wage statements x \$100 penalty) + 50 penalty for first violation] =
 \$2,950 maximum in penalties per employee.)

1 **f. The Ninth Circuit’s Benchmark Of 25 Percent Of The**
 2 **Amount Recoverable For An Award Of Attorneys’ Fees**
 3 **In Class Actions Requires Over \$1 Million To Be Added**
 4 **To The Amount In Controversy.**

5 60. Plaintiff seeks to recover attorneys’ fees by way of her Complaint.
 6 Complaint ¶¶ 44, 51, 56, and 72; Prayer for Relief, ¶ 11. It is well settled that, in
 7 determining whether a complaint meets the amount in controversy requirement, a
 8 court should consider the aggregate value of claims *as well as* attorney’s fees. *See, e.g.,*
 9 *Bell v. Preferred Life Assurance Soc’y*, 320 U.S. 238 (1943); *Galt G/S v. JSS*
 10 *Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998) (attorneys’ fees may be taken
 11 into account to determine jurisdictional amounts). In fact, the Ninth Circuit has an
 12 established benchmark of 25 percent of the amount recoverable for an award of
 13 attorneys’ fees in class actions. *See Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir.
 14 2003) (“This circuit has established 25% of the common fund as a benchmark award
 15 for attorney fees”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)
 16 (same). This 25 percent figure has been repeatedly relied upon by the courts to
 17 determine the amount in controversy for removal purposes. *Altamirano v. Shaw Indus.,*
 18 *Inc.*, No. C-13-0939 EMC, 2013 WL 2950600, at *13 (N.D. Cal. June 14, 2013)
 19 (including 25 percent attorneys’ fees to increase the amount in controversy to above
 20 \$5 million CAFA threshold); *Giannini v. Nw. Mut. Life Ins. Co.*, No. C 12-77 CW,
 21 2012 WL 1535196, at *4 (N.D. Cal. Apr. 30, 2012) (same).

22 61. In California, where wage and hour class actions have settled prior to
 23 trial for millions of dollars, it is not uncommon for an attorneys’ fee award to be 25
 24 percent to 30 percent of the settlement and, thus even a conservative estimate of
 25 attorneys’ fees in this matter would be far in excess of \$1 million.⁵

26 ⁵ *See Abasi v. HCA, the Healthcare Co. Inc.*, C.D. Cal. No. CV 03-7606 (May 9,
 27 2005) (approving \$4.75 million settlement for claims of unpaid overtime, meal and
 28 rest break periods; attorney’s fee award totaling over \$1.2 million (25 percent)); *Burns*
 29 *v. Merrill Lynch*, N.D. Cal. No. 3:04-cv-04135 (August 2005) (approving \$37 million
 30 settlement for claims of failure to pay overtime; attorneys’ fees of \$9.25 million (25
 31 percent)); *Coldiron v. Pizza Hut-Yum! Brands, Inc.*, C.D. Cal. No. 03-5865 (June
 32 2006) (approving \$12.5 million settlement for alleged improperly classified restaurant

1 62. Furthermore, in affirmatively ruling that attorney’s fees “may be included
 2 in the amount in controversy,” *Galt G/S*, 142 F.3d at 1155, the Ninth Circuit “must
 3 have anticipated that district courts would project fees beyond removal.” *Simmons*,
 4 209 F. Supp. 2d at 1034-35. Just as the “court determines the amount in controversy
 5 based on the damages that can reasonably be anticipated at the time of removal,” it
 6 also must “measure . . . fees . . . that can reasonably be anticipated at the time of
 7 removal, not merely those already incurred.” *Id.*; *see also Cagle*, 2014 WL 651923, at
 8 *10-11 (holding that an estimate of the amount of attorney hours through trial was a
 9 reasonable estimate for purposes of determining amount in controversy); *Brady v.*
 10 *Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002) (holding
 11 that for determining amount in controversy, attorneys’ fees should be assessed through
 12 trial, and finding amount in controversy met in part by reasonable estimate of fees).
 13 Therefore, the Court may consider a 25 percent attorney’s fees award for the purposes
 14 of calculating the amount in controversy.

15 63. Based on Plaintiff’s allegations, the amount in controversy for just
 16 unpaid overtime, unpaid minimum wages, meal and rest break premiums, and waiting
 17 time and wage statement penalties is **\$9,188,250.83**. This subtotal far exceeds
 18 \$5,000,000 absent any inclusion of attorneys’ fees. However, taking into account
 19 attorneys’ fees at the benchmark percentage of 25 percent further increases the amount
 20 in controversy by **\$2,297,062.71** for a total amount in controversy of **\$11,485,313.54**.

21 **VII. SUMMARY OF AMOUNT IN CONTROVERSY**

22 65. Removal of this action is therefore proper, as the aggregate value of
 23 Plaintiff’s class causes of action for unpaid minimum wages, unpaid overtime, meal
 24 and rest break premiums, waiting time penalties, wage statement penalties, and
 25

26 managers as exempt from overtime with attorneys’ fees of \$3.125 million (25
 27 percent)); *Mousai v. E-Loan, Inc.*, N.D. Cal. No. 3:06-cv-01993-SI (January 12, 2007)
 28 (preliminary approval of settlement of \$13.6 million for claims of unpaid overtime,
 and meal and rest break violations; attorneys’ fees award estimated at \$3.4 million
 (25%)).

1 attorneys' fees are well in excess of the CAFA jurisdictional requirement of \$5
 2 million. *See* 28 U.S.C. § 1332(d)(2):

Plaintiff's Alleged Claim	Amount in Controversy
Unpaid Minimum Wages	\$696,307.12
Unpaid Overtime	\$95,645.00
Meal Break Premiums	\$3,481,535.59
Rest Break Premiums	\$3,481,535.59
Waiting Time Penalties	\$841,727.52
Wage Statement Penalties	\$591,500.00
TOTAL (w/o attorney's fees)	\$9,188,250.83
Attorneys' Fees	\$2,297,062.71
AMOUNT IN CONTROVERSY	\$11,485,313.54

14 66. Accordingly, although Defendant denies Plaintiff's claims as alleged in
 15 the Complaint, the jurisdictional minimum is satisfied for purposes of determining the
 16 amount in controversy, as it exceeds the \$5,000,000 threshold required under CAFA.
 17 *See* 28 U.S.C. § 1332(d)(2).

18 **VIII. CONCLUSION**

19 67. For the reasons set forth above, the Complaint is removable to this Court
 20 pursuant to 28 U.S.C. § 1332(d). Pursuant to 28 U.S.C. § 1446(b), the Notice of
 21 Removal was filed within thirty (30) days of service on any defendant of a paper
 22 providing notice that a basis for removal of this action exists.

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68. **WHEREFORE**, Defendant prays that this civil action be removed from the Superior Court of the State of California, County of San Bernardino, to the United States District Court for the Central District of California, Eastern Division, and requests that this Court assume full jurisdiction over this matter as provided by law.

Dated: September 9, 2020

Respectfully submitted,

/s/ Rebeca Aragon
REBECCA ARAGON
HOVANNES G. NALBANDYAN
LAURA E. SCHNEIDER
LITTLER MENDELSON, P.C.
Attorneys for Defendant
CWI, INC. d/b/a CAMPING WORLD,
a Kentucky Corporation

4813-5992-7241.1 099507.1015

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 633 W. Fifth Street, 63rd Floor
 5 Los Angeles, CA 90071
 Telephone: 213.443.4300
 6 Fax No.: 213.443.4299

7 Attorneys for Defendant
 8 CWI, INC. D/B/A CAMPING WORLD, A
 KENTUCKY CORPORATION

9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 KAYLA MILLIGAN, and on behalf
 of all others similarly situated,

13
 14 Plaintiffs,

15 v.

16 CWI, INC. d/b/a
 17 CAMPINGWORLD, a Kentucky
 Corporation, and DOES 1 through
 18 50, inclusive,

19 Defendants.

Case No. 5:20-cv-01847

**DECLARATION OF REBECCA
 ARAGON IN SUPPORT OF
 DEFENDANT’S NOTICE OF
 REMOVAL TO FEDERAL COURT**

[28 U.S.C. §§ 1332, 1441, & 1446]

Complaint filed: July 8, 2020
 (San Bernardino Superior Court,
 Case No. CIVDS2013999)

Trial Date: None Set

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DECLARATION OF REBECCA ARAGON

I, **Rebecca Aragon**, declare as follows:

1. I am a shareholder with the law firm of Littler Mendelson, a Professional Corporation, counsel of record for Defendant CWI, INC. D/B/A CAMPING WORLD, A KENTUCKY CORPORATION (hereinafter, “Defendant”) in this action. I am duly licensed to practice law in the State of California and am one of the attorneys responsible for representing Defendant in this action. I make this Declaration in support of Defendant’s Notice of Removal of Civil Action to Federal Court Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 (“Notice of Removal”). Except where otherwise indicated, all of the information contained herein is based upon my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto. Based on my knowledge of the case, and review of the Court’s docket, I can confirm the following:

2. On August 10, 2020, Plaintiff served on Defendant the following documents: Complaint, Summons, Certificate of Assignment, Civil Case Cover Sheet, Internal Case Management Conference Order, Initial Complex Order and Guidelines, and Guidelines for the Complex Litigation Program, true and correct copies of which are attached hereto as **Exhibit A**.

3. On September 4, 2020, Defendant filed its Answer to Plaintiff’s unverified Class Action Complaint in the Superior Court of the State of California, County of San Bernardino, however the court rejected the filing and sent a “Notice of Return of Documents Sent” on the same day. This Notice has not yet been received by Defendant. Attached hereto as **Exhibit B** is a true and correct copy of the San Bernardino Superior Court’s docket in this case, reflecting that a “Notice of Return of Documents Sent” was filed by the court on September 4, 2020.

4. On September 8, 2020, Defendant re-filed and served its Answer to Plaintiff’s unverified Class Action Complaint in the Superior Court of the State of

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1 California, County of San Bernardino. Attached hereto as **Exhibit C** is a true and
2 correct copy of Defendant's as-filed, non-conformed answer.

3 5. No other party is named or has been validly served as of the date of this
4 removal.

5 6. This declaration sets forth all the process, pleadings, and orders filed, to
6 be filed, or served upon Defendant, to Defendant's current knowledge, in this action to
7 the present date. To the best of my knowledge, no further process, pleadings, or orders
8 related to this case have been filed in San Bernardino County Superior Court or served
9 by any party. *See* Exhibit B, reflecting all processes, pleadings, and orders served on
10 Defendant or filed with the Court in this action.

11 7. Attached hereto as **Exhibit D** is a true and correct copy of the Notice to
12 State Court and Plaintiff of Removal of Civil Action to Federal Court, without its
13 accompanying exhibits, that Defendant will file with the Court and serve on Plaintiff's
14 counsel, James R. Hawkins and Samantha A. Smith of James Hawkins APLC, 9880
15 Research Drive, Suite 200, Irvine, CA 92618, tomorrow, or shortly thereafter.

16 I hereby declare under penalty of perjury under the laws of the United
17 States and the State of California that the foregoing is true and correct.

18 Executed on September 9, 2020 at Los Angeles, California.

19
20 /s/ Rebeca Aragon
21 REBECCA ARAGON

22 4844-5624-8265.1 099507.1015
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Exhibit A



**Service of Process
Transmittal**

08/10/2020
CT Log Number 538071236

TO: Brent Moody
FreedomRoads, LLC
250 Parkway Dr Ste 270
Lincolnshire, IL 60069-4346

RE: Process Served in California

FOR: CWI, INC. (Domestic State: KY)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Kayla Milligan, etc., Pltf. vs. CWI, INC., etc., et al., Dfts.

DOCUMENT(S) SERVED: .

COURT/AGENCY: None Specified
Case # CIVDS2013999

NATURE OF ACTION: Employee Litigation - Discrimination

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 08/10/2020 at 15:20

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780119044797
Image SOP
Email Notification, Brent Moody bmoody@freedomroads.com
Email Notification, JENNIFER NAPIER jnapier@campingworld.com
Email Notification, Lindsey Christen lchristen@campingworld.com
Email Notification, Kristin Zobel kristin.zobel@campingworld.com
Email Notification, Sandra Brunson sbrunson@campingworld.com
Email Notification, Charles Gockenbach cgockenbach@campingworld.com
Email Notification, Solomea Young solomea.young@campingworld.com
Email Notification, Colleen Mason colleen.mason@campingworld.com

SIGNED: C T Corporation System
ADDRESS: 208 South LaSalle Street
Suite 814
Chicago, IL 60604

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.



**Service of Process
Transmittal**

08/10/2020

CT Log Number 538071236

TO: Brent Moody
FreedomRoads, LLC
250 Parkway Dr Ste 270
Lincolnshire, IL 60069-4346

RE: Process Served in California

FOR: CWI, INC. (Domestic State: KY)

For Questions:

866-331-2303
CentralTeam1@wolterskluwer.com

Page 2 of 2 / AK

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

PROCESS SERVER DELIVERY DETAILS

Date: Mon, Aug 10, 2020

Server Name: Douglas Forrest

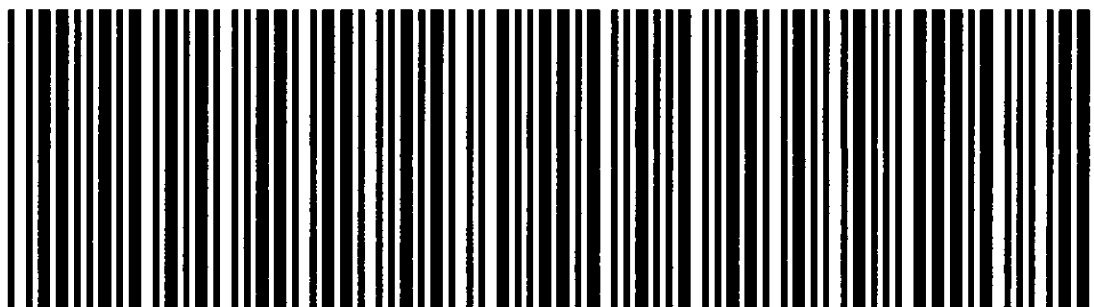
Location: Los Angeles, CA-LA

Entity Served CWI Inc.

Agent Name

Case Number CIVDS2013999

Jurisdiction CA-LA



SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DEL TRIBUNAL)
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 08 2020

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CWI, INC. d/b/a CAMPING WORLD, a Kentucky Corporation, and DOES 1-50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

KAYLA MILLIGAN, and on behalf of all others similarly situated,

BY 
ANAI CORTEZ-RAMIREZ, DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the Information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Bernardino Justice Center
247 West 3rd Street, San Bernardino, CA 92415

CASE NUMBER: (Número del Caso):
CIV DS 2013999

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

James Hawkins APLC; 9880 Research Dr., Suite 200, Irvine, CA 92618; 949-387-7200

DATE: **JUL 08 2020** Clerk, by **Anai Cortez-Ramirez**, Deputy (Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

(SEAL)
Copy

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **CWI Inc. d/b/a Camping World a Kentucky Corporation**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date) **8/10/20**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 08 2020

1 JAMES HAWKINS APLC
2 James R. Hawkins (192925)
3 Samantha A. Smith (233331)
4 9880 Research Drive, Suite 200
5 Irvine, CA 92618
6 Tel.: (949) 387-7200
7 Fax: (949) 387-6676
8 Email: James@jameshawkinsaplc.com
9 Email: Samantha@jameshawkinsaplc.com

BY 
ANAI CORTEZ-RAMIREZ, DEPUTY

6 Attorneys for Plaintiff Kayla Milligan
7 individually and on behalf of all others similarly situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**

12 KAYLA MILLIGAN, and on behalf of all
13 others similarly situated,

14 Plaintiffs,

15 v.

16 CWI, INC. d/b/a CAMPING WORLD, a
17 Kentucky Corporation, and DOES 1-50,
18 inclusive,

19 Defendants.

CASE NO.: **CIV DS 2013999**

Assigned For All Purposes To:
Judge:
Dept.:

**CLASS ACTION COMPLAINT
FOR:**

1. Failure to Pay Wages;
2. Failure to Provide Meal Periods as Required;
3. Failure to Provide Rest Periods as Required;
4. Failure to Pay Timely Wages;
5. Failure to Provide Accurate Itemized Wage Statements; and
6. Violation of Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Kayla Milligan (“Plaintiff”), individually and on behalf of all others similarly
2 situated (hereinafter collectively referred to as the “Class” or “Class Member”), hereby files this
3 Complaint against Defendant CWI, INC. doing business as CAMPING WORLD; and DOES 1-50,
4 inclusive (collectively “Defendants”) and alleges on information and belief as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This class action is brought pursuant to California Code of Civil Procedure §382.
7 The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits
8 of the California Superior Court and will be established according to proof at trial.

9 2. This Court has jurisdiction over this action pursuant to the California Constitution
10 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
11 except those given by statute to other courts. The statutes under which this action is brought do not
12 give jurisdiction to any other court.

13 3. This Court has jurisdiction over Defendants because, upon information and belief,
14 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
15 avails itself of the California market so as to render the exercise of jurisdiction over it by the
16 California Courts consistent with traditional notions of fair play and substantial justice.

17 4. Venue is proper in this Court because upon information and belief, one or more of
18 the Defendants, reside, transact business, or have offices in this County and/or the acts or
19 omissions alleged herein took place in this County.

20 **II. PARTIES**

21 5. Plaintiff Kayla Milligan was at all times relevant to this action, a resident of
22 California. Plaintiff was employed by Defendants from approximately September, 2017 through
23 March, 2020, as a non-exempt employee.

24 6. Other than identified herein, Plaintiff is unaware of the true names, capacities,
25 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as
26 DOES 1 through 50, but are informed and believe and thereon alleges that said defendants are
27 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
28 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities

1 are ascertained.

2 7. Plaintiff is informed and believes and thereon alleges that each defendant, directly
3 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
4 Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed
5 and believe and thereon allege that each Defendant acted in all respects pertinent to this action as
6 the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
7 pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

8 **III. CLASS ACTION ALLEGATION**

9 8. Plaintiff brings this action individually and on behalf of all others similarly
10 situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are
11 defined as follows:

12 All persons who are or have been employed by Defendants as non-exempt employees or
13 equivalent positions, however titled, in the state of California within four (4) years from
14 the filing of the Complaint in this action until its resolution. (collectively referred to as the
"Class" or "Class Members").

15 9. Plaintiff also seeks to represent the subclass(es) composed of and defined as
16 follows:

17 **Waiting Time Subclass**

18 All Class members who separated their employment from Defendants within three years
19 prior to the filing of this action to the present and continuing.

20 10. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
21 applicable laws to amend or modify the class definition with respect to issues or in any other
22 ways. Plaintiff is a member of the Class as well the Subclass.

23 11. The term "Class" includes Plaintiff and all members of the Class and the
24 Subclass, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in this
25 complaint.

26 12. There is a well-defined community of interest in the litigation and the proposed
27 Class is easily ascertainable through the records Defendants are required to keep.

28 13. **Numerosity**. The members of the Class are so numerous that individual joinder

1 of all of them as plaintiffs is impracticable. While the exact number of the Class Members is
2 unknown to Plaintiff at this time, Plaintiff is informed and believe and thereon alleges that there
3 are at least 100 (one hundred) Class Members.

4 14. Commonality. Common questions of law and fact exist as to all Class
5 Members and predominate over any questions that affect only individual members of the Class.
6 These common questions include, but are not limited to:

7 i. Whether Defendants failed to pay all lawful earned wages to Plaintiff and
8 Class Members;

9 ii. Whether Defendants failed to accurately pay overtime to Plaintiff and Class
10 Members;

11 iii. Whether Defendants deprived Plaintiff and Class Members of lawful meal
12 periods without compensation;

13 iv. Whether Defendants deprived Plaintiff and Class Members of lawful rest
14 breaks without compensation;

15 v. Whether Defendants required Plaintiff and Class Members to remain on
16 premises during rest breaks;

17 vi. Whether Defendants failed to provide suitable seating;

18 vii. Whether Defendants provided accurate itemized wage statements pursuant
19 to Labor Code section 226;

20 viii. Whether Defendants failed to timely pay all wages due to Plaintiff and
21 Subclass members upon termination or within 72 hours of resignation;

22 ix. Whether Plaintiff and Class Members are entitled to equitable relief
23 pursuant to Business and Professions Code section 17200, *et. seq.*

24 15. Typicality. Plaintiff's claims herein alleged are typical of those claims which
25 could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of
26 the relief which would be sought by each member of the Class and/or Subclass in separate actions.

27 Plaintiff and all members of the Class and or Subclass sustained injuries and damages arising out
28

1 of and caused by Defendants' common course of conduct in violation of California laws,
2 regulations, and statutes as alleged herein.

3 16. Adequacy. Plaintiff is qualified to, and will fairly and adequately, protect the
4 interests of each member of the Class and/or Subclass with whom she has a well-defined
5 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
6 obligation to make known to the Court any relationships, conflicts, or differences with any
7 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
8 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
9 settlement and experienced in handling such matters. Other former and current employees of
10 Defendants may also serve as representatives of the Class and Subclass if needed.

11 17. Superiority. A class action is superior to other available means for the fair and
12 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
13 court. Class action treatment will allow a large number of similarly situated persons to prosecute
14 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
15 duplication of effort and expense that numerous individual actions would require. The damages
16 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
17 and the expense and burden of individual litigation would make it extremely difficult or
18 impossible for the individual Class Members to seek and obtain individual relief. A class action
19 will serve an important public interest by permitting such individuals to effectively pursue
20 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
21 or contradictory judgments raised by individual litigation.

22 18. Public Policy Considerations: Employers in the state of California violate
23 employment and labor laws everyday. Current employees are often afraid to assert their rights out
24 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
25 they believe their former employers may damage their future endeavors through negative
26 references and/or other means. The nature of this action allows for the protection of current and
27 former employees' rights without fear or retaliation or damage.

28

IV. FACTUAL ALLEGATIONS

1
2 19. At all times set forth herein, Defendants employed Plaintiff and other persons in the
3 capacity of non-exempt hourly positions, however titled, throughout the state of California at
4 Defendants' various California retail locations.

5 20. Plaintiff is informed and believes that all Class Members are citizens of the state of
6 California.

7 21. Defendants continue to employ non-exempt employees, however titled, in
8 California and implement a uniform set of policies and practices to all non-exempt employees, as
9 they were all engaged in the generic job duties of retail sales.

10 22. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
11 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
12 of the requirements of California's wage and employment laws.

13 23. Plaintiff is informed and believes, and thereon alleges, that Defendants
14 improperly calculated the overtime rate of pay for Plaintiff and Class Members because the rates
15 did not include non-discretionary wages, including, but not limited to, bonuses, commissions,
16 and/or other incentive pay into the computation of their regular rate of pay for purposes of
17 calculating the overtime rate of pay.

18 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Class Members were entitled to receive wages for all time
20 worked (including minimum and overtime wages) and that they were not receiving all wages
21 earned for work that was required to be performed. In violation of the Labor Code and IWC Wage
22 Orders, Plaintiff and Class Members were not paid all wages (including minimum and overtime
23 wages) for all hours worked at the proper rates of pay.

24 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
25 Members were regularly required to work shifts in excess of five hours without being provided a
26 lawful meal period and over ten hours in a day without being provided a second lawful meal
27 period as required by law.

28 26. Indeed, during the relevant time, as a consequence of Defendants' staffing and

1 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
2 Defendants frequently failed to provide Plaintiff and Class Members timely, legally compliant
3 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

4 27. Despite the above-mentioned meal period violations, Defendants failed to
5 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
6 additional hour of pay at their regular rate as required by California law when meal periods were
7 not timely or lawfully provided in a compliant manner.

8 28. Plaintiff is informed and believe, and thereon alleges, that Defendants know,
9 should know, knew, and/or should have known that Plaintiff and Class Members were entitled to
10 receive premium wages based on their regular rate of pay under Labor Code §226.7 but were not
11 receiving such compensation.

12 29. In addition, during the relevant time frame, Plaintiff and Class Members were
13 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
14 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC
15 wage order.

16 30. Plaintiff is informed and believe, and thereon alleges, that Defendants maintained
17 and enforced scheduling practices, policies, and imposed work demands that frequently required
18 Plaintiff and Class Members to forego their lawful, paid rest periods of a net ten minutes for every
19 four hours worked or major fraction thereof. Such requisite rest periods were not timely authorized
20 and permitted. Plaintiff and Class Members would often work through their rest periods to meet
21 their sales quotas and due to a lack of relief to take a rest period.

22 31. In addition, Plaintiff and Class Members were not allowed to leave the premises
23 during rest breaks.

24 32. Despite the above-mentioned rest period violations, Defendants did not compensate
25 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
26 their regular rate as required by California law, including Labor Code section 226.7 and the
27 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
28 permitted.

33. Plaintiff is informed and believe, and thereon alleges, that during the relevant time

1 period, Plaintiff and Class Members were also not provided suitable seating during their work
2 shifts in violation of applicable IWC Wage Orders when employees were not engaged in duties
3 which required them to stand. As such, Defendants failed to provide Plaintiff and Class Members
4 with suitable seating while performing their job duties in violation of California Wage Orders.

5 34. Plaintiff is informed and believe, and thereon alleges, that Defendants also failed to
6 provide accurate, lawful itemized wage statements to Plaintiff and Class Members in part because
7 of the above specified violations. In addition, upon information and belief, Defendants omitted an
8 accurate itemization of total hours worked, including premiums due and owing for meal and rest
9 period violations, gross pay and net pay figures from Plaintiff's and the Class Members' wage
10 statements.

11 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
13 thereof for resignations without prior notice as the case may be) they had a duty to accurately
14 compensate Plaintiff and Class Members for all wages owed including minimum wages, meal and
15 rest period premiums, and Defendants had the financial ability to pay such compensation, but
16 willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-
17 specified violations.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY ALL LAWFUL WAGES INCLUDING OVERTIME**

20 **(Against All Defendants)**

21 36. Plaintiff incorporates and re-allege each and every allegation contained above as
22 though fully set forth herein.

23 37. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class
24 require employers to pay its employees for each hour worked at least minimum wage. "Hours
25 worked" means the time during which an employee is subject to the control of an employer, and
26 includes all the time the employee is suffered or permitted to work, whether or not required to do
27 so, and in the case of an employee who is required to reside on the employment premises, that
28 time spent carrying out assigned duties shall be counted as hours worked.

38. At all times relevant, the IWC wage orders applicable to Plaintiff and Class

1 Members' employment by Defendants provided that employees working for more than eight (8)
2 hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate
3 of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours
4 in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours
5 in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

6 39. Labor Code §510 codifies the right to overtime compensation at the rate of one and
7 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
8 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for
9 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
10 seventh day of work in a particular work week.

11 40. At all relevant times, Labor Code §1197.1 states “[a]ny employer or other persons
12 acting individually as an officer, agent, or employee of another person, who pays or causes to be
13 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
14 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
15 damages payable to the employee, and any applicable penalties pursuant to Section 203...”

16 41. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
17 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
18 *et. seq.* and the Labor Code.

19 42. As discussed herein, Defendants did not compensate Plaintiff and class members
20 one additional hour of pay at their regular rate as required by California law, including Labor
21 Code section 226.7 and the applicable IWC wage order, for each day on which lawful meal
22 periods and rest breaks were not authorized and permitted. As a result, Plaintiff and class members
23 were not paid all lawful wages, including minimum wages and overtime wages. Plaintiff is
24 informed and believes, and thereon alleges, that Defendants knew or should have known that
25 Plaintiff and class members were entitled to receive all wages owed yet failed to do so.

26 43. During the relevant time period, Defendants also failed to pay Plaintiff and Class
27 Members overtime wages at the correct rate due to Defendants' failure to include non-
28 discretionary wages, including, but not limited to, bonuses, commissions, and/or other incentive

1 pay in the computation of their overtime rate of pay, which caused Plaintiff and Class Members to
2 not be paid all overtime wages owed. Accordingly, Defendants owe Plaintiff and Class Members
3 unpaid overtime wages.

4 44. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are
5 entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and
6 attorneys' fees.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**
9 **(Against All Defendants)**

10 45. Plaintiff incorporates and re-alleges each and every allegation contained above as
11 though fully set forth herein.

12 46. Pursuant to Labor Code §512, no employer shall employ an employee for a work
13 period of more than five (5) hours without providing a meal break of not less than thirty (30)
14 minutes in which the employee is relieved of all of his or her duties. An employer may not employ
15 an employee for a work period of more than ten (10) hours per day without providing the
16 employee with a second meal period of not less than thirty (30) minutes, except that if the total
17 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
18 consent of the employer and the employee only if the first meal period was not waived.

19 47. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
20 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
21 the work of the employee must prevent an employee from being relieved of all duties relating to
22 his or her work for the employer and the employees must consent in writing to the "on duty" meal
23 period. On information and belief, Plaintiff and Class Members did not consent in writing to an
24 "on duty" meal period. Further, the nature of the work of Plaintiff and Class Members was not
25 such that they were prevented from being relieved of all duties. Despite the requirements of the
26 IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants and
27 Labor Code §512 and §226.7, Defendants did not provide Plaintiff and Class Members with all
28 their statutorily authorized meal periods.

1 48. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
2 provide Plaintiff and Class Members, timely and uninterrupted meal periods of not less than thirty
3 (30) minutes pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
4 employment by Defendants. As a proximate result of the aforementioned violations, Plaintiff and
5 Class Members have been damaged in an amount according to proof at time of trial.

6 49. By their failure to provide a compliant meal period for each shift worked over five
7 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
8 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
9 lieu of such non-provided meal periods, as alleged above, Defendants violated the provisions of
10 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders.

11 50. Plaintiff and the Class Members she seeks to represent did not voluntarily or
12 willfully waive meal periods and were regularly required to work shifts without being provided all
13 of her legally required meal periods. Defendants created a working environment in which Plaintiff
14 and Class Members were not provided all of their meal periods due to shift scheduling and/or
15 work-related demands placed upon them by Defendants as well as a lack of sufficient staffing to
16 meet the needs of Defendants' business as discussed above. On information and belief,
17 Defendants' implemented a policy and practice which resulted in systematic and class-wide
18 violations of the Labor Code. On information and belief, Defendants' violations have been
19 widespread throughout the relevant period and will be evidenced by Defendants' time records for
20 the Class Members.

21 51. As a result of the unlawful acts of Defendants described herein, Plaintiff and the
22 Class Members she seeks to represent have been deprived of premium wages in amounts to be
23 determined at trial. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
24 recover one (1) hour of premium pay for each day in which a meal period was not provided, along
25 with interest and penalties thereon, attorneys' fees, and costs.

26
27
28

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(Against All Defendants)

52. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

53. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members' employment by Defendants, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages." Labor Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period mandated by an applicable order of the IWC.

54. Defendants were required to authorize and permit employees such as Plaintiff and Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants, Defendants failed and refused to authorize and permit Plaintiff and Class Members to take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

55. On information and belief Defendants created a working environment in which Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling and/or work-related demands placed upon them by Defendants as well as a lack of sufficient staffing to meet the needs of Defendants' business as discussed above. On information and belief, Defendants implemented a policy and practice which resulted in systematic and class-wide violations of the Labor Code. On information and belief, Defendants' violations have been widespread throughout the relevant period.

56. As a proximate result of the aforementioned violations, Plaintiff and Class

1 Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor
2 Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for
3 each day in which Defendants failed to provide a rest period to Plaintiff and the Class, plus
4 interest and penalties thereon, attorneys' fees, and costs.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PAY TIMELY PAY WAGES**

7 **(Against All Defendants)**

8 57. Plaintiff incorporates and re-alleges each and every allegation contained above as
9 though fully set forth herein.

10 58. Labor Code §§201-202 requires an employer who discharges an employee to pay
11 compensation due and owing to said employee immediately upon discharge and that if an
12 employee voluntarily leaves his or her employment, his or her wages shall become due and
13 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
14 two (72) hours previous notice of his or her intention to quit, in which case the employee is
15 entitled to his or her wages on their last day of work.

16 59. Labor Code §203 provides that if an employer willfully fails to pay compensation
17 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
18 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

19 60. During the relevant time period, Defendants willfully failed and refused, and
20 continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and
21 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
22 leaving Defendants' employ. These wages include regular and overtime.

23 61. As a result, Defendants are liable to Plaintiff and members of the Class for waiting
24 time penalties pursuant to Labor Code §203, in an amount according to proof at the time of trial.

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

27 **(Against All Defendants)**

28 62. Plaintiff incorporates and re-alleges each and every allegation contained above as

1 though fully set forth herein.

2 63. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
3 statements all deductions from payment of wages and to accurately report total hours worked by
4 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among other
5 things. Defendants have knowingly and intentionally failed to comply with Labor Code section
6 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

7 64. IWC Wage Orders require Defendants to maintain time records showing, among
8 others, when the employee begins and ends each work period, meal periods, split shift intervals
9 and total daily hours worked in an itemized wage statement, and must show all deductions and
10 reimbursements from payment of wages, and accurately report total hours worked by Plaintiffs
11 and the Class. On information and belief, Defendants have failed to record all or some of the items
12 delineated in Industrial Wage Orders and Labor Code §226.

13 65. As a result of Defendants' knowing and intentional failure to comply with Labor
14 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-
15 protected rights. Specifically, Plaintiff and Class Members have been injured by Defendants'
16 intentional violation of Labor Code § 226(a) because they were denied both their legal right to
17 receive, and their protected interest in receiving, accurate itemized wage statements under Labor
18 Code § 226(a). In addition, Defendants have made it difficult to calculate the amount of wages and
19 compensation owed to Plaintiff and Class Members. Plaintiff has had to file this lawsuit and will
20 be required to conduct discovery and perform computations in order to analyze whether in fact
21 Plaintiff was paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur
22 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
23 costs had Defendants provided wage statements accurately showing her regular and overtime rates
24 of pay, among other things. This has also delayed Plaintiff's ability to demand and recover the
25 underpayment of wages from Defendants.

26 66. Plaintiff and Class Members are entitled to recover from Defendants the greater of
27 their actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or an
28 aggregate penalty not exceeding \$4,000 dollars per employee.

SIXTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.

(Against All Defendants)

67. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

68. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure §1021.5.

69. Defendants' policies, activities, and actions as alleged herein, are violations of California law and constitute unlawful business acts and practices in violation of California Business and Professions Code §§17200, *et seq.*

70. A violation of California Business and Professions Code §§17200, *et seq.*, may be predicated on the violation of any state or federal law. Defendants' policies and practices have violated state law in at least the following respects:

- (a) Failing to pay all lawful wages owed to Plaintiff and Class Members in violation of Labor Code §§ 510, 1194, 1197 and 1198;
- (b) Failing to provide lawful uninterrupted meal periods without paying Plaintiff and Class Members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512;
- (c) Failing to authorize or permit lawful rest breaks without paying Plaintiff and Class Members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7;
- (d) Failing to provide Plaintiff and Class Members with accurate itemized wage statements in violation of Labor Code § 226; and

1 (e) Failing to timely pay all earned wages to Plaintiff and Class
2 Members upon separation of employment in violation of Labor
3 Code §§ 201, 202 and 203.

4 71. Defendants intentionally avoided paying Plaintiff and Class Members' wages and
5 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
6 undercut their competitors and establish and gain a greater foothold in the marketplace.

7 72. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and Class
8 Members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
9 during a period that commences four years prior to the filing of the Complaint; an award of
10 attorney's fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
11 award of costs.

12 **PRAYER FOR RELIEF**

13 Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief
14 and judgment against Defendants, jointly and severally, as follows:

15 1. For certification of the proposed Class and Subclass and any other appropriate
16 subclasses under California Code of Civil Procedure § 382;

17 2. For appointment of Kayla Milligan as the class representative;

18 3. For appointment of James Hawkins, APLC as class counsel for all purposes;

19 4. For general damages;

20 5. For special damages;

21 6. For statutory penalties to the extent permitted by law, including those pursuant to
22 the Labor Code and IWC Wage Orders;

23 7. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

24 8. For an order requiring Defendants to restore and disgorge all funds to each
25 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
26 or fraudulent and, therefore, constituting unfair competition under Business and Professions
27 Code §§ 17200, *et seq.*;

28

COPY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Kayla Milligan

Case No: **CIV DS 2013999**

vs.

CERTIFICATE OF ASSIGNMENT

CWI, INC.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the Central District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

General **Collection**

Nature of Action

Ground

- | | | |
|-------------------------------------|----------------------------|---|
| <input type="checkbox"/> | 1. Adoption | Petitioner resides within the district. |
| <input type="checkbox"/> | 2. Conservator | Petitioner or conservatee resides within the district. |
| <input type="checkbox"/> | 3. Contract | Performance in the district is expressly provided for. |
| <input type="checkbox"/> | 4. Equity | The cause of action arose within the district. |
| <input type="checkbox"/> | 5. Eminent Domain | The property is located within the district. |
| <input type="checkbox"/> | 6. Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> | 7. Guardianship | Petitioner or ward resides within the district or has property within the district. |
| <input type="checkbox"/> | 8. Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> | 9. Mandate | The defendant functions wholly within the district. |
| <input type="checkbox"/> | 10. Name Change | The petitioner resides within the district. |
| <input type="checkbox"/> | 11. Personal Injury | The injury occurred within the district. |
| <input type="checkbox"/> | 12. Personal Property | The property is located within the district. |
| <input type="checkbox"/> | 13. Probate | Decedent resided or resides within or had property within the district. |
| <input type="checkbox"/> | 14. Prohibition | The defendant functions wholly within the district. |
| <input type="checkbox"/> | 15. Review | The defendant functions wholly within the district. |
| <input type="checkbox"/> | 16. Title to Real Property | The property is located within the district. |
| <input type="checkbox"/> | 17. Transferred Action | The lower court is located within the district. |
| <input type="checkbox"/> | 18. Unlawful Detainer | The property is located within the district. |
| <input type="checkbox"/> | 19. Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| <input checked="" type="checkbox"/> | 20. Other Employment | <u>Class Action</u> |
| <input type="checkbox"/> | 21. THIS FILING WOULD | NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT. |

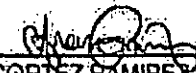
The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

Jobsite Address: 151 E. Redlands Blvd.
NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR: ADDRESS:

San Bernardino CA 92408
CITY STATE ZIP CODE

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 7, 2020 at Irvine, California.

Samantha Smith
Signature of Attorney/Party

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James R. Hawkins, SBN 192925 Samantha A. Smith, SBN 233331 JAMES HAWKINS, APLC 9880 Research Dr., Suite 200, Irvine, CA 92618 TELEPHONE NO. 949-387-7200 FAX NO. 949-387-6676 ATTORNEY FOR (Name): Kayla Milligan	FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT JUL 08 2020 BY:  ANAI CORTEZ-AMIREZ, DEPUTY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF: San Bernardino STREET ADDRESS: 247 West 3rd Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, 92415 BRANCH NAME: San Bernardino Justice Center	CASE NAME: Milligan v. CWI, INC.	
CIVIL CASE COVER SHEET: <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation: <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: CIV DS 2013999 JUDGE: DEPT:

Items 1-6, below, must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/D/W (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/D/W (23) Non-PIP/D/W (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/D/W tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case: is, is not, complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:


a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 6

5. This case: is, is not, a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 7, 2020
 Samantha A. Smith, Esq. 

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PIPDWD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/W (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/W (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/W

Non-PI/PD/W (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/W Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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Superior Court of California
County of San Bernardino
247 W. Third Street, Dept. S-26
San Bernardino, CA 92415-0210

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 30 2020

BY Alfie Cervantes
ALFIE CERVANTES, DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

KAYLA MILLIGAN

Case No.: CIVDS 2013999

vs.

CWI, INC.

**INITIAL CASE MANAGEMENT
CONFERENCE ORDER**

This case is assigned for all purposes to Judge David Cohn in the Complex Litigation Program, Department S-26, located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, California, 92415-0210. Telephone numbers for Department S-26 are (909) 521-3519 (Judicial Assistant) and (909) 708-8866 (Court Attendant).

The Initial Case Management Conference

1
2 An initial Case Management Conference (CMC) is scheduled for OCT 19 2020
3 at 9:00 a.m. Due to the social distancing requirements imposed by the COVID-19
4 pandemic, the initial CMC (and all subsequent CMCs) will be conducted remotely, via
5 CourtCall. Contact CourtCall at (888) 882-6878 (www.CourtCall.com) to schedule the
6 appearance through CourtCall. Until further order of the Court, in-person attendance at
7 CMCs is not allowed.¹

9 Counsel for all parties are ordered to attend the initial CMC. If there are
10 defendants who have not yet made a general or special appearance, those parties who
11 are presently before the court may jointly request a continuance of the initial CMC to
12 allow additional time for such non-appearing defendants to make their general or
13 special appearances. Such a request should be made by submitting a Stipulation and
14 Proposed Order to the Court, filed directly in Department S-26, no later than five court
15 days before the scheduled hearing.

Stay of the Proceedings

18
19 Pending further order of this Court, and except as otherwise provided in this
20 Order, these proceedings are stayed in their entirety. This stay precludes the filing of
21 any answer, demurrer, motion to strike, or motions challenging the jurisdiction of the
22 Court. Each defendant, however, is directed to file a Notice of General Appearance (or
23 a Notice of Special Appearance if counsel intends to challenge personal jurisdiction) for
24 purposes of identification of counsel and preparation of a service list. The filing of a
25

26
27
28 ¹ In-person appearances are allowed for motions, but are discouraged. Until the Pandemic restrictions are lifted, please use CourtCall whenever possible.

1 Notice of General Appearance is without prejudice to any substantive or procedural
2 challenges to the complaint (including subject matter jurisdiction), without prejudice to
3 any denial or affirmative defense, and without prejudice to the filing of any cross-
4 complaint. The filing of a Notice of Special Appearance is without prejudice to any
5 challenge to the court's exercise of personal jurisdiction. This stay of the proceedings is
6 issued to assist the court and the parties in managing this case through the
7 development of an orderly schedule for briefing and hearings on any procedural or
8 substantive challenges to the complaint and other issues that may assist in the orderly
9 management of this case. This stay shall not preclude the parties from informally
10 exchanging documents and other information that may assist them in their initial
11 evaluation of the issues.
12
13

14 **Service of this Order**

15 Plaintiffs' counsel is ordered to serve this Order on counsel for each defendant,
16 or, if counsel is not known, on each defendant within five days of the date of this Order.
17 If the complaint has not been served as the date of this Order, counsel for plaintiff is to
18 serve the complaint along with this Order within ten days of the date of this Order.
19

20 **Agenda for the Initial Case Management Conference**

21 Counsel for all parties are ordered to meet and confer in person no later than ten
22 days before the initial CMC to discuss the subjects listed below. Counsel
23 must be fully prepared to discuss these subjects with the court:
24

- 25 1. Any issues of recusal or disqualification;
- 26 2. Any potentially dispositive or important threshold issues of law or fact that, if
27 considered by the court, may simplify or further resolution of the case;
- 28

- 1 3. Appropriate mechanisms for Alternative Dispute Resolution;
- 2 4. A plan for the preservation of evidence and a uniform system for the identification
- 3 of documents to be used throughout the course of this litigation, including
- 4 discovery and trial;
- 5 5. A discovery plan for the disclosure and production of documents and other
- 6 discovery, including whether the court should order automatic disclosures,
- 7 patterned on Federal Rule of Civil Procedure 26(a) or otherwise;
- 8 6. Whether it is advisable to conduct discovery in phases so that information
- 9 needed to conduct meaningful ADR is obtained early in the case;
- 10 7. Any issues involving the protection of evidence and confidentiality;
- 11 8. The use and selection of an electronic service provider;
- 12 9. The handling of any potential publicity issues;
- 13 10. Any other issues counsel deem appropriate to address with the court.

14 **The Joint Report**

15 Counsel are ordered to prepare a Joint Report for the initial CMC, to be filed
16 directly in Department S-26 (not in the Clerk's office), no later than four court days
17 before the conference date. The Joint Report must include the following:

- 18 1. Whether the case should or should not be treated as complex;
- 19 2. Whether additional parties are likely to be added and a proposed date by which
- 20 all parties must be served;
- 21 3. A service list (the service list should identify all primary and secondary counsel,
- 22 firm names, addresses, telephone numbers, email addresses, and fax numbers
- 23 for all counsel.)

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4. Whether the court should issue an order requiring electronic service. Counsel should advise the court regarding any preferred web-based electronic service provider;
5. Whether any issues of jurisdiction or venue exist that might affect this court's ability to proceed with this case.
6. Whether there are applicable arbitration agreements, and the parties' views on their enforceability;
7. A list of all related litigation pending in this or other courts (state and federal), a brief description of any such litigation, including the name of the judge assigned to the case, and a statement whether any additional related litigation is anticipated;
8. A description of the major factual and legal issues in the case. The parties should address any contracts, statutes, or regulations on which claims or defenses are based, or which will require interpretation in adjudicating the claims and defenses;
9. The parties' tentative views on an ADR mechanism and how such mechanism might be integrated into the course of the litigation;
10. A discovery plan, including the time need to conduct discovery and whether discovery should be conducted in phases or limited (and, if so, the order of phasing or types of limitations). With respect to the discovery of electronically stored information (ESI), the plan should include:
 - a. Identification of the Information Management Systems used by the parties;

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- b. The location and custodians of information that is likely to be subject to production (including the identification of network and email servers and hard-drives maintained by custodians);
 - c. The types of ESI that will be requested and produced, e.g. data files, emails, etc.;
 - d. The format in which ESI will be produced;
 - e. Appropriate search criteria for focused requests;
 - f. A statement whether the parties will allow their respective IT consultants or employees to participate directly in the meet and confer process.
11. Whether the parties will stipulate that discovery stays or other stays entered by the court for case management purposes will be excluded in determining the statutory period for bringing the case to trial under Code of Civil Procedure Section 583.310 (the Five Year Rule).
12. Recommended dates and times for the following:
- a. The next CMC;
 - b. A schedule for any contemplated ADR;
 - c. A filing deadline (and proposed briefing schedule) for any anticipated non-discovery motions.
 - d. With respect to class actions, the parties' tentative views on an appropriate deadline for a class certification motion to be filed.

To the extent the parties are unable to agree on any matter to be addressed in the Joint Report, the positions of each party or of various parties should be set forth separately. The parties are encouraged to propose, either jointly or separately, any

1 approaches to case management that they believe will promote the fair and efficient
2 handling of this case.

3 Any stipulations to continue conferences or other hearings throughout this
4 litigation must be filed with the court directly in Department S-26 (not in the Clerk's
5 office), no later than four court days before the conference or hearing date.
6

7 Informal Discovery Conferences

8 Motions concerning discovery cannot be filed without first requesting an informal
9 discovery conference (IDC) with the court. Making a request for an IDC automatically
10 stays the deadline for filing any such motion. IDCs are conducted remotely, via the
11 BlueJeans Video Conferencing program. Attendees will need to download the
12 BlueJeans program (available from the app stores for IOS or Android) to a computer,
13 laptop, tablet, or smartphone. If the device being used does not have camera
14 capability, the BlueJeans application offers an audio-only option. Video appearance at
15 the IDC, however, is encouraged. The Court will provide a link to join the conference at
16 the appointed time. Please provide Department S-26's Judicial Assistant ((909) 521-
17 3519) or Court Attendant ((909) 708-8866) with an e-mail address. No briefing is
18 required for the IDC, but counsel should lodge (not file) the relevant discovery record in
19 Department S-26 before the IDC.
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26 Dated: 7/30, 2020.

27 **DAVID COHN**

28

David Cohn,
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

San Bernardino District - Civil
247 West Third Street

San Bernardino CA 924150210

CASE NO: CIVDS2013999

JAMES HAWKINS APLC
9880 RESEARCH DR
STE 800
IRVINE CA 92618

I M P O R T A N T C O R R E S P O N D E N C E

From the above entitled court, enclosed you will find:

INITIAL COMPLEX ORDER AND GUIDELINES

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice:

- Enclosed in a sealed envelope mailed to the interested party addressed above, for collection and mailing this date, following standard Court practices.
- Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.
- A copy of this notice was given to the filing party at the counter
- A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

Date of Mailing: 07/31/20

I declare under penalty of perjury that the foregoing is true and correct. Executed on 07/31/20 at San Bernardino, CA

BY: ALFIE CERVANTES

M A I L I N G C O V E R S H E E T

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

**JUDGE DAVID COHN
DEPARTMENT S-26**

**JUDGE JANET FRANGIE
DEPARTMENT S-29**



THE SAN BERNARDINO COUNTY COMPLEX LITIGATION PROGRAM

The Complex Litigation Department for the Superior Court of the State of California, County of San Bernardino, is located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, CA 92415-0210. The Complex Litigation judges are Judge David Cohn, Department S-26, and Judge Janet Frangie, Department S-29. Telephone numbers for Department S-26 are 909-521-3519 (judicial assistant) and 909-708-8866 (court attendant). Telephone numbers for Department S-29 are 909-521-3461 (judicial assistant) and 909-521-3467 (court attendant)

These guidelines govern complex litigation only in Departments S-26 and S-29. When complex cases are assigned to other Departments, the judges may or may not choose to follow all or some of these guidelines.

DEFINITION OF COMPLEX LITIGATION

As defined by California Rules of Court, rule 3.400(a), a complex case is one that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.

Complex cases typically have one or more of the following features:

- A large number of separately represented parties.
- Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve.
- A substantial amount of documentary evidence.
- A large number of witnesses.
- Coordination with related actions pending in one or more courts in other counties or states or in a federal court.
- Substantial post-judgment judicial supervision.

Complex cases may include, but are not necessarily limited to, the following types of cases:

- Antitrust and trade regulation claims.
- Construction defect claims involving many parties or structures.
- Securities claims or investment losses involving many parties.
- Environmental or toxic tort claims involving many parties.
- Mass torts.
- Class actions.
- Claims brought under the Private Attorney General Act (PAGA).
- Insurance claims arising out of the types of claims listed above.
- Judicial Council Coordinated Proceedings (JCCP).
- Cases involving complex financial, scientific, or technological issues.

CASES ASSIGNED TO THE COMPLEX LITIGATION DEPARTMENT

A. Cases Designated by a Plaintiff as Complex or Provisionally Complex

All cases designated by a plaintiff as complex or provisionally complex on the Civil Case Cover Sheet (Judicial Council Form CM-100) will be assigned initially to the Complex Litigation Department. The Court will issue an Initial Case Management Conference Order and schedule an Initial Case Management Conference as provided by California Rules of Court, rule 3.750, for the earliest practicable date, generally within approximately seventy-five days of the filing of the complaint.

A plaintiff designating the case as complex or provisionally complex must serve the Initial Case Management Conference Order and a copy of these guidelines on all parties at the earliest opportunity before the conference, and must file proof of service of the summons and complaint and proof of service of the Initial Case Management Conference Order with the court.

A defendant who agrees that the case is complex or provisionally complex may indicate a "Joinder" on the Civil Case Cover Sheet (Form CM- 100).

A defendant who disagrees that the case is complex or provisionally complex may raise the issue with the court at the Initial Case Management Conference.

B. Cases Counter-Designated By a Defendant as Complex or Provisionally Complex

All cases which were not designated by a plaintiff as complex or provisionally complex, but which are counter-designated by a defendant (or cross-defendant) as complex or provisionally complex on the Civil Case Cover Sheet (Judicial Council Form CM-100), will be re-assigned to the Complex Litigation Department. At such time, the Court will schedule an Initial Case Management Conference for the earliest practicable date, generally within approximately forty-five days. A defendant (or cross-defendant) counter-designating the case as complex or provisionally complex must serve a copy of these guidelines on all parties at the earliest opportunity.

A plaintiff or other party who disagrees with the counter-designation may raise the issue with the court at the Initial Case Management Conference.

C. Other Cases Assigned to the Complex Litigation Department

Whether or not the parties designate the case as complex or provisionally complex, the following cases will be initially assigned to the Complex Litigation Department:

- All Construction Defect Cases.
- All Class Actions.
- All Cases Involving Private Attorney General Act (PAGA) Claims.¹
- Judicial Council Coordinated Proceedings (JCCP) if so assigned by the Chair of the Judicial Council.

REFERRAL TO THE COMPLEX LITIGATION DEPARTMENT BY OTHER DEPARTMENTS

A judge who is assigned to a case may, but is not required to, refer the case to the Complex Litigation Department to be considered for treatment as a complex case if (1) the case was previously designated by a party as complex or provisionally complex, or (2) the referring judge deems the case to involve issues of considerable legal, evidentiary, or logistical complexity, such that the case would be best served by assignment to the Complex Litigation Department. Such a referral is not a re-assignment, but is a referral for consideration.

In any case referred by another judge to the Complex Litigation Department, the Complex Litigation Department will schedule an Initial Case Management Conference, generally within thirty days, and will provide notice to all parties along with a copy of these guidelines. If the case is determined by the Complex Litigation Department to be appropriate for treatment as a complex case, the case will be re-assigned to the Complex Litigation Department at that time. If the case is determined by the Complex Litigation Department not to be complex, it will be returned to the referring judge.

¹ The Civil Case cover Sheet (Judicial Council Form CM-100) may not reflect the presence of a PAGA claim. PAGA claims erroneously assigned to non-complex departments are subject to re-assignment to the Complex Litigation Department by the assigned judge.

STAY OF DISCOVERY PENDING THE INITIAL CASE MANAGEMENT CONFERENCE

For cases that are assigned to the Complex Litigation Department, discovery is automatically stayed pending the Initial Case Management Conference, or until further order of the court. Discovery is not automatically stayed, however, for cases that were initially assigned to other departments and are referred to the Complex Litigation Department for consideration, unless the referring judge stays discovery pending determination by the Complex Litigation whether the case should be treated as complex.

OBLIGATION TO MEET AND CONFER BEFORE THE INITIAL CASE MANAGEMENT CONFERENCE

Prior to the Initial Case Management Conference, all parties are required to meet and confer to discuss the items specified in California Rules of Court, rule 3.750(b), and they are required to prepare a Joint Statement specifying the following:

- Whether additional parties are likely to be added, and a proposed date by which any such parties must be served.
- Each party's position whether the case should or should not be treated as a complex.
- Whether there are applicable arbitration agreements.
- Whether there is related litigation pending in state or federal court.
- A description of the major legal and factual issues involved in the case.
- Any discovery or trial preparation procedures on which the parties agree. The parties should address what discovery will be required, whether discovery should be conducted in phases or otherwise limited, and whether the parties agree to electronic service and an electronic document depository and, if so, their preferred web-based electronic service provider.
- An estimate of the time needed to conduct discovery and to prepare for trial.
- The parties' views on an appropriate mechanism for Alternative Dispute Resolution.
- Any other matters on which the parties request a court ruling.

The Joint Statement is to be filed directly in the Complex Litigation Department no later than four court days before the conference. This requirement of a Joint Statement is not satisfied by using Judicial Council Form CM-110, pursuant to California Rules of Court, rule 3.725(a), or by parties filing individual statements. Failure to participate meaningfully in the "meet and confer" process or failure to submit a Joint Statement may result in the imposition of monetary or other sanctions.

THE INITIAL CASE MANAGEMENT CONFERENCE

At the Initial Case Management Conference, the court will determine whether the action is a complex case, as required by California Rules of Court, rule 3.403. If the court determines the case is complex, the court will issue further management-related orders at that time. If the court determines the case is not complex, the case may be retained by the judge, but not treated as a complex case, or it may be reassigned to a different department; if the case was referred by another judge and the case is found to be inappropriate for treatment as a complex case, the case will be returned to the

referring judge.

At the Initial Case Management Conference, the court and counsel will address the subjects listed in California Rules of Court, rule 3.750(b), and all issues presented by the Joint Statement.

Once a case is deemed complex, the function of the Initial Case Management Conference and all subsequent Case Management Conferences is to facilitate discovery, motion practice, and trial preparation, and to discuss appropriate mechanisms for settlement negotiations.

Lead counsel should attend the Initial Case Management Conference. Counsel with secondary responsibility for the case may attend in lieu of lead counsel, but only if such counsel is fully informed about the case and has full authority to proceed on all issues to be addressed at the conference. "Special Appearance" counsel (lawyers who are not the attorneys of record) are not allowed.

REMOTE APPEARANCES AT CASE MANAGEMENT CONFERENCES

Pending further order of the Court, all Case Management Conferences will be conducted remotely, via CourtCall, without in-person attendance of counsel or parties. CourtCall appearances are scheduled by telephoning CourtCall at (888) 882-6878. See www.CourtCall.com for further information.

CASE MANAGEMENT ORDERS

The court may issue formal, written case management orders. Typically, complex construction defect cases will proceed pursuant to such an order. Other cases involving numerous parties or unusual logistical complexity may be appropriate for such a written order as well. The need for a written case management order will be discussed at the Initial Case Management Conference or at later times as the need arises. The parties will prepare such orders as directed by the court.

ADDITIONAL CASE MANAGEMENT CONFERENCES

After the Initial Case Management Conference, the court will schedule additional case management conferences as necessary and appropriate on a case-by-case basis.

As with the Initial Case Management Conference, lead counsel should attend all case management conferences. Counsel with secondary responsibility for the case may attend in lieu of lead counsel, but only if such counsel is fully informed about the case and has full authority to proceed on all issues to be addressed. "Special Appearance" counsel (lawyers who are not the attorneys of record) are not allowed. As with the initial Case Management Conference, until further order of the Court, all additional case management conferences are conducted remotely, via CourtCall.

VOLUNTARY SETTLEMENT CONFERENCES

If all parties agree, the court is available to conduct settlement conferences. Requests for settlement conferences may be made at any Case Management Conference or hearing, or by telephoning the Complex Litigation Department.

MANDATORY SETTLEMENT CONFERENCES

In appropriate cases, the court may order mandatory settlement conferences. Parties with full settlement authority, including insurance adjustors with full settlement authority, must attend all mandatory settlement conferences.

MANAGEMENT OF CLASS ACTIONS

In class actions and putative class actions that are deemed complex, the Initial Case Management Conference will function as the Case Conference required by California Rules of Court, rules 3.762 and 3.763.

OBLIGATION TO MEET AND CONFER REGARDING MOTIONS

In addition to any other requirement to "meet and confer" imposed by statute or Rule of Court in connection with motions, all counsel and unrepresented parties are required to "meet and confer" in a good faith attempt to eliminate the necessity for a hearing on a pending motion, or to resolve or narrow some of the issues. The moving party must arrange for the conference, which can be conducted in person or by telephone or video conference, to be held no later than four calendar days before the hearing. No later than two calendar days before the hearing, the moving party is required to file a notice in Department S-26, with service on all parties, specifying whether the conference has occurred and specifying any issues that have been resolved. If the need for a hearing has been eliminated, the motion may simply be taken off-calendar. Failure to participate meaningfully in the conference may result in the imposition of monetary or other sanctions.

The obligation to "meet and confer" does not apply to applications to appear *pro hac vice* or to motions to withdraw as counsel of record.

FORMAT OF PAPERS FILED IN CONNECTION WITH MOTIONS

Counsel and unrepresented parties must comply with all applicable statutes, Rules of Court, and Local Rules regarding motions, including but not limited to their format. Additionally, exhibits attached to motions and oppositions must be separately tabbed at the bottom, so that exhibits can be easily identified and retrieved.

ELECTRONIC SERVICE AND DOCUMENT DEPOSITORY

The parties in cases involving numerous parties or large quantities of documents are encouraged to agree to electronic service for all pleadings, motions, and other materials filed with the court as well as all discovery requests, discovery responses, and correspondence. Nevertheless, parties must still submit "hard" copies to the court of any pleadings, motions, or other materials that are to be filed.

INFORMAL DISCOVERY CONFERENCES

The court is available for informal discovery conferences at the request of counsel. Such

conferences may address the scope of allowable discovery, the order of discovery, issues of privilege, and other discovery issues that may arise. Counsel may contact the Complex Litigation Department to schedule an informal conference.

Before filing any discovery motion, the moving party is required to "meet and confer" with counsel as required by statute. If the "meet and confer" exchange fails to resolve all issues, the moving party is required to request an informal conference with the court before filing any discovery motion. Making a request for an informal discovery conference automatically stays the deadline for filing a motion.

Informal Discovery Conferences are conducted remotely, via the BlueJeans Video Conferencing. Attendees will need to download the BlueJeans program (available from the app stores for IOS or Android) to a computer, laptop, tablet, or smartphone. If the device to be used does not have camera capability, the BlueJeans application offers an audio-only option. Video appearance, however, is encouraged. Counsel will be provided with a link to connect to the conference at the appointed time.

Briefing is not required, though each counsel should lodge (not file) a one-page statement of the issues in dispute in the Department before the informal discovery conference.

CONFIDENTIAL DOCUMENT AND PROTECTIVE ORDERS

Proposed protective orders dealing with confidential documents should state expressly that nothing in the order excuses compliance with California Rules of Court, rules 2.550 and 2.551. Proposed protective orders that are not compliant with the requirements of the Rules of Court will be rejected.

THE PRETRIAL CONFERENCE

The court will schedule a pre-trial conference, generally thirty to sixty days in advance of the trial. Counsel and the court will discuss the following matters, which counsel should be fully informed to address:

- Whether trial will be by jury or by the court.
- Anticipated motions *in limine* or the need for other pre-trial rulings.
- The anticipated length of trial.
- The order of proof and scheduling of witnesses, including realistic time estimates for each witness for both direct and cross-examination.
- If there is a large number of anticipated witnesses, whether counsel wish to have photographs taken of each witness to refresh the jury's recollection of each witness during closing argument and deliberation.
- Whether deposition testimony will be presented by video.
- The need for evidentiary rulings on any lengthy deposition testimony to be presented at trial.
- Stipulations of fact.
- Stipulations regarding the admission of exhibits into evidence.
- If there is a large amount of documentary evidence, how the exhibits will be presented in a meaningful way for the jury.
- The use of technology at trial, including but not limited to electronic evidence.

- Any unusual legal or evidentiary issues that may arise during the trial.

THE TRIAL READINESS CONFERENCE

Trial Readiness Conferences are held at 10:00 a.m., typically on the Thursday morning preceding the scheduled trial date. Counsel and unrepresented parties must comply fully with Local Rule 411.2, unless otherwise directed by the court. Failure to have the required materials available for the court may result in the imposition of monetary or other sanctions.

TRIALS

Trial dates are generally Monday through Thursday, 11:00 a.m. to 12:00 p.m. and 1:30 p.m. to 4:30 p.m. Lengthy trials, however, may require deviation from this schedule. Unless otherwise ordered by the court, counsel and unrepresented parties must be present in the courtroom at least ten minutes before each session of trial is scheduled to begin.

Whenever possible, issues to be addressed outside the presence of the jury should be scheduled in a manner to avoid the need for the jury to wait.

Exhibit B

Actions

[Home](#)
[Complaints/Parties](#)
[Actions](#)
[Minutes](#)
[Pending Hearings](#)
[Case Report](#)
[Images](#)

Case Type: 

Case Number:

Case CIVDS2013999 - (COMPLEX)MILLIGAN -V- CWI INC





Viewed	Date	Action Text	Disposition	Image
	10/19/2020 9:00 AM DEPT. S26	COMPLEX CASE MANAGEMENT CONFERENCE. - Minutes		
	09/04/2020	NOTICE OF RETURN OF DOCUMENTS SENT.	Not Applicable	
	08/17/2020	PROOF OF SERVICE OF SUMMONS AND COMP/PET ON CWI, INC.; DEFENDANT/RESPONDENT SERVED ON 08/10/20 WITH COSTS OF \$147.76 FILED.	Not Applicable	
N	07/30/2020	NOTICE IMAGED	Not Applicable	
	07/30/2020	CORRESPONDENCE COVERSHEET GENERATED TO MAIL INITIAL COMPLEX ORDER AND GUIDELINES TO COUNSEL OF RECORD	Not Applicable	
N	07/30/2020	ORDER RE INITIAL COMPLEX CASE MANAGEMENT CONFERENCE FILED	Not Applicable	
N	07/08/2020	CERTIFICATE OF ASSIGNMENT RECEIVED.	Not Applicable	
	07/08/2020	PLAINTIFF KAYLA MILLIGAN FIRST PAPER FEE PREVIOUSLY PAID IN FULL.	Not Applicable	
	07/08/2020	FILING FEE PAID BY KAYLA MILLIGAN FOR COMPLEX FEES	Not Applicable	
	07/08/2020	FILING FEE PAID BY KAYLA MILLIGAN FOR FIRST PAPER FEE	Not Applicable	
	07/08/2020	CASE ASSIGNED FOR ALL PURPOSES TO DEPARTMENT S26		
N	07/08/2020	CIVIL CASE COVER SHEET FILED.	Not Applicable	
N	07/08/2020	SUMMONS ISSUED AND FILED	Not Applicable	
N	07/08/2020	COMPLAINT AND PARTY INFORMATION ENTERED	Not Applicable	

Exhibit C

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5 Los Angeles, CA 90071
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7 Attorneys for Defendant
CWI, INC. D/B/A CAMPING WORLD, A
8 KENTUCKY CORPORATION

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

12 KAYLA MILLIGAN, and on behalf of all
others similarly situated,

13 Plaintiffs,

14 v.

15 CWI, INC. d/b/a CAMPING WORLD, a
Kentucky Corporation, and DOES 1
16 through 50, inclusive,

17 Defendants.

Case No. CIVDS2013999

**DEFENDANT'S ANSWER TO
PLAINTIFF'S UNVERIFIED COMPLAINT
(CLASS ACTION)**

*[ASSIGNED FOR ALL PURPOSES TO JUDGE
DAVID COHN, DEPT. S-26]*

Complaint Filed: July 8, 2020
Trial Date: None Set

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1 **TO PLAINTIFF KAYLA MILLIGAN AND HER ATTORNEYS OF RECORD:**

2 Defendant CWI, INC. d/b/a CAMPING WORLD, A KENTUCKY CORPORATION
3 (hereinafter, “CWI” or “Defendant”), and severing itself from the unserved and unnamed DOE
4 defendants, and reserving the right to assert additional defenses or claims that may become known
5 during the course of discovery, answers on its own behalf the unverified Class Action Complaint
6 (“Complaint”) of Plaintiff KAYLA MILLIGAN (“Plaintiff”)¹, individually, and in her representative
7 capacity as follows:

8 **GENERAL DENIAL/PREFATORY STATEMENT**

9 Pursuant to California Code of Civil Procedure section 431.30, Defendant generally and
10 specifically denies each and every allegation in Plaintiff’s Complaint, and further denies that Plaintiff
11 or other alleged class members are entitled to penalties, equitable or injunctive relief, compensatory
12 damages, restitution, attorneys’ fees, prejudgment interest, costs of suit, or any other relief of any kind
13 whatsoever.

14 Defendant bases its general denial on the factual contentions, which include, but are not limited
15 to, the following:

16 (1) Defendant’s alleged misconduct did not injure or otherwise damage Plaintiff and/or the
17 putative class members;

18 (2) Defendant did not engage in unlawful business acts or practices in violation of California
19 Business and Professions Code sections 17200, *et seq.*;

20 (3) Plaintiff’s definition of the proposed class is unreasonably broad, exceeds the applicable
21 statute of limitations, and is over-reaching (“All current and former hourly-paid employees employed
22 by Defendant within the State of California at any time during the period from July 8, 2016 to final
23 judgment”); and

24 (4) Plaintiff will be unable to establish the prerequisites for class certification, including, but
25 not limited to: standing, numerosity, commonality (questions of law or fact common to the class),
26 typicality (Plaintiff’s claims are typical of the class), superiority (of the class action mechanism), and

27 _____
28 ¹ All references to “Plaintiff” in this Answer necessarily include the Plaintiff and the putative class members that Plaintiff seeks to represent.

1 class action manageability (of the trial plan).

2 Defendant reserves its due process right to receive a determination regarding class certification,
3 and contends that class certification is not appropriate in this instance for the reasons set forth herein
4 as well as for public policy reasons.

5 Finally, given the conclusory nature of the Complaint, Defendant hereby reserves its rights to
6 amend its Answer upon further investigation and discovery of facts supporting its defenses.

7 **AFFIRMATIVE DEFENSES**

8 Defendant further asserts the following affirmative defenses. In so doing, Defendant does not
9 concede that it has the burden of production or proof as to any affirmative defense asserted below.
10 Further, Defendant does not presently know all facts concerning the conduct of Plaintiff sufficient to
11 state all affirmative defenses at this time. Accordingly, Defendant will seek leave of this Court to
12 amend this Answer should it later discover facts demonstrating the existence of additional affirmative
13 defenses or if such facts modifying existing defenses. Defendant incorporates (as if fully set forth
14 herein) this express denial with each reference to “Plaintiff” and “putative class members.” Without
15 waiving its ability to oppose class certification and explicitly asserting its opposition to the propriety
16 of class treatment, if the Court does certify a class in this case over Defendant’s objections, then
17 Defendant asserts the affirmative defenses set forth below against each member of the certified class.

18 **FIRST AFFIRMATIVE DEFENSE**

19 (Failure to State a Cause of Action)

20 1. As a separate and distinct affirmative defense to Plaintiff’s Complaint and each
21 purported Cause of Action therein, Defendant alleges that the Complaint and each purported Cause of
22 Action therein, fails in whole or in part to state facts sufficient to constitute a claim against Defendant.

23 **SECOND AFFIRMATIVE DEFENSE**

24 (Contractual Obligation to Arbitrate)

25 2. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff’s
26 Complaint, and each Cause of Action contained therein, are barred on grounds there exists a written
27 agreement between Plaintiff and numerous putative class members and Defendant to submit any and
28 all employment-related claims to final and binding arbitration, and that each and every Cause of Action

3.

1 alleged in the Complaint is subject to final and binding arbitration in accordance with the terms of said
2 written agreement, which included a valid class action waiver provision. *See AT&T Mobility, LLC v.*
3 *Concepcion*, 563 U.S. 333 (2011). CWI does not waive its right to enforce the signed arbitration
4 agreements of any alleged aggrieved employees.

5 **THIRD AFFIRMATIVE DEFENSE**

6 (Failure to Utilize Complaint Procedure Including Arbitration)

7 3. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's
8 Complaint, and/or some of the Causes of Action contained therein, is barred by the failure or refusal of
9 the Plaintiff and/or putative class members to timely and completely utilize the complaint procedure
10 established by Defendant, including but not limited to Defendant's arbitration procedure, which was at
11 all times available and applicable to the Plaintiff and/or the putative class members that Plaintiff seeks
12 to represents. CWI does not waive its right to enforce the signed arbitration agreements of any alleged
13 aggrieved employees.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 (Federal Arbitration Act)

16 4. As a separate and affirmative defense to Plaintiff's Complaint, Defendant alleges that
17 the Complaint, and each purported cause of action alleged therein, is barred on the grounds that this
18 Court lacks subject matter jurisdiction over the matter as Plaintiff is contractually obligated to submit
19 Plaintiff's claims to binding arbitration pursuant to Federal Arbitration Act, 8 U.S.C. §§ 1, *et seq.* CWI
20 does not waive its right to enforce the signed arbitration agreements of any alleged aggrieved
21 employees.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 (Statutes of Limitation)

24 5. As a separate and distinct affirmative defense, Defendant is informed and believes that
25 a reasonable opportunity for investigation and discovery will reveal and, on that basis allege, that
26 Plaintiff's Complaint and each Cause of Action alleged therein, or some of them, cannot be maintained
27 against them insofar as they are barred, in whole or in part, by the applicable statutes of limitation,
28 including, but not limited to, California Labor Code section 203(b), California Code of Civil Procedure

1 sections 335.1, 337, 338, 339, 340 and 343, and California Business and Professions Code section
2 17208.

3 **SIXTH AFFIRMATIVE DEFENSE AFFIRMATIVE DEFEMSE**

4 (Waiver)

5 6. As a separate and affirmative defense to the Complaint and each purported cause of
6 action therein, Defendant alleges, based upon the belief that further investigation and discovery will
7 reveal facts supporting such defense, that Plaintiff's claims are barred in whole or in part by the
8 equitable doctrine of waiver.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 (Estoppel)

11 7. As a separate and affirmative defense to the Complaint and each purported cause of
12 action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal
13 facts supporting such defense, that Plaintiff's claims are barred, in whole or in part, by the equitable
14 doctrine of estoppel.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 (Laches)

17 8. As a separate and distinct affirmative defense to the Complaint and each purported cause
18 of action, Defendant alleges, based upon the belief that further investigation and discovery will reveal
19 evidence supporting such defense, that Plaintiff's claims are barred, in whole or in part, by the
20 equitable doctrine of laches. In particular, to the extent Plaintiff seeks to recover for periods prior to
21 June 25, 2016, her action is barred by laches, in addition to applicable statutes of limitation.

22 **NINTH AFFIRMATIVE DEFENSE**

23 (Unclean Hands)

24 9. As a separate and affirmative defense to the Complaint and each purported cause of
25 action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal
26 facts supporting such defense, that Plaintiff's claims are barred, in whole or in part, by the equitable
27 doctrine of unclean hands.

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TENTH AFFIRMATIVE DEFENSE

(Consent)

10. As a separate and affirmative defense to the Complaint and each purported cause of action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal facts supporting such defense, that Plaintiff’s claims are barred, in whole or in part, by the equitable doctrine of consent.

ELEVENTH AFFIRMATIVE DEFENSE

(Substantial Compliance)

11. As a separate and distinct affirmative defense, Defendant alleges that, even assuming, arguendo, Defendant failed to comply with any provision of the Labor Code, Defendant substantially complied with the Labor Code, thus rendering an award of civil penalties inappropriate under the circumstances.

TWELFTH AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

12. As a separate and affirmative defense to the Complaint and each purported cause of action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal facts supporting such defense, that Plaintiff’s claims are barred, in whole or in part, to the extent that Plaintiff or any putative class member has received, or will receive, compensation for any outstanding wages, penalties, or damages purportedly due.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Damage or Harm)

13. As a separate and affirmative defense to the Complaint and each purported cause of action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal facts supporting such defense, that Plaintiff’s claims are barred, in whole or in part, because neither Plaintiff nor any putative class member has suffered any cognizable damage or other harm as a result of any act or omission of CWI.

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1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 (No Causation)

3 14. As a separate and affirmative defense to the Complaint and each purported cause of
4 action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal
5 facts supporting such defense, that Plaintiff's claims are barred, in whole or in part, because the alleged
6 losses or harms sustained by Plaintiff and the putative class members, if any, resulted from causes
7 other than any act or omission of Defendant, or from the acts or omissions of Plaintiff or the putative
8 class members.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 (Outside Scope of Authority)

11 15. As a separate and affirmative defense to the Complaint and each purported cause of
12 action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal
13 facts supporting such defense, that Plaintiff's claims are barred, in whole or in part, because any
14 unlawful or other wrongful acts of any person(s) employed by CWI were outside of the scope of their
15 authority and such acts, if any, were not authorized, ratified, or condoned by CWI, nor did CWI know
16 or have reason to be aware of such alleged conduct.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 (*Res Judicata*/Collateral Estoppel)

19 16. As a separate and affirmative defense to the Complaint and each purported cause of
20 action therein, CWI alleges, and based upon the belief that further investigation and discovery will
21 reveal facts supporting such defense, that Plaintiff's claims are barred, in whole or in part, by the
22 doctrines of res judicata and/or collateral estoppel insofar as the putative class members that Plaintiff
23 seeks to represent have litigated or will litigate issues raised by the Complaint prior to adjudication of
24 those issues in the instant action. *See* Cal. Code Civ. Proc. § 430.10(c); *see also Hamilton v. Asbestos*
25 *Corp., Ltd.*, 22 Cal. 4th 1127 (2000).

26 **SEVENTEENTH AFFIRMATIVE DEFENSE**

27 (Settlement and Release)

28 17. As a separate and affirmative defense to the Complaint and each purported cause of

1 action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal
2 facts supporting such defense, that Plaintiff's claims are barred, in whole or in part, to the extent that
3 Plaintiff and some, or all, of the putative class members she seeks to represent have released CWI
4 from any liability as a result of the settlement reached in *Farnsworth v. FreedomRoads, LLC, et al.*,
5 Case No. BC649034, class action and PAGA matter.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7 (Claims Discharged)

8 18. As a separate and distinct affirmative defense, Defendant alleges that the Complaint,
9 and each cause of action set forth therein, or some of them, are barred because all or a portion of the
10 wages, premium pay, interest, attorneys' fees, penalties and/or other relief sought by Plaintiff on her
11 own behalf and/or on behalf of the putative class members were, or will be before the conclusion of
12 this action, paid or collected, and therefore, Plaintiff's claims and/or the claims of the putative class
13 members have been partially or completely discharged.

14 **NINETEENTH AFFIRMATIVE DEFENSE**

15 (After-Acquired Evidence)

16 19. As a separate and affirmative defense to the Complaint and each purported cause of
17 action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal
18 facts supporting such defense, that evidence acquired subsequent to the filing of Plaintiff's Complaint
19 bars and/or limits the amount of damages Plaintiff can recover, assuming *arguendo*, CWI is found
20 liable for any asserted claim.

21 **TWENTIETH AFFIRMATIVE DEFENSE**

22 (Avoidable Consequences)

23 20. As a separate and distinct affirmative defense, Defendant is informed and believes that
24 a reasonable opportunity for investigation and discovery will reveal and, on that basis allege, that
25 Plaintiff's claims for damages are barred by the doctrine of avoidable consequences because: (a)
26 Defendant is maintained adequate and appropriate policies including open door policies with
27 complaint procedures; (b) Defendant exercised reasonable care to prevent and correct promptly any
28 unlawful behavior; and (c) Plaintiff unreasonably failed to take advantage of any preventative or

1 corrective opportunities provided by Defendant or to otherwise avoid harm. Consequently, Plaintiff's
2 claims for damages are barred by the doctrine of avoidable consequences.

3 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

4 (Class Action - No Standing)

5 21. As a separate and distinct defense to the Complaint, Defendant is informed and believes
6 that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that
7 the Complaint, and each cause of action set forth therein, or some of them, is barred because the named
8 Plaintiff lacks standing as a representative of the proposed class and does not adequately represent the
9 putative class members.

10 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

11 (Class Action - Denies Defendant's Due Process Rights)

12 22. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's
13 Complaint and each purported Cause of Action therein is barred because the certification of a class,
14 as applied to the facts and circumstances of this case, would constitute a denial of Defendant's due
15 process rights, both substantive and procedural, and to a trial by jury, both substantively and
16 procedurally in violation of the Due Process and Equal Protection clauses of the Fourteenth
17 Amendment of the United States Constitution and the Due Process and Equal Protection clauses of
18 Article I, Section 7 of the California Constitution.

19 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

20 (Class Action - Claims Not Suitable for Representative Action)

21 23. As a separate and affirmative defense, Defendant alleges that Plaintiff's and/or
22 any putative class members' purported claims are such that they cannot be tried on a class or
23 representative basis because such (1) a determination requires complex individualized factual issues,
24 (2) damages and/or penalties could not be calculated on a representative basis, (3) any damages and/or
25 penalties that might be proved would not be identical for all putative class members, and (4) trying
26 such a class or representative action would be unmanageable.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Class-Wide Proof Violates Constitution)

24. As a separate and distinct affirmative defense to Plaintiff’s Complaint and each purported Cause of Action therein, Defendant alleges that the adjudication of the claims of the putative classes through generalized class-wide proof violates Defendant’s right to a trial by jury under the United States Constitution and the Constitution of the State of California.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Wage Orders – Violation of Due Process)

25. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff’s Complaint and/or Causes of Action therein are barred because the applicable wage orders of the Industrial Welfare Commission are unconstitutionally vague and ambiguous and violate Defendant’s rights under the United States Constitution and the California Constitution as to, among other things, due process of law.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(No Injury)

26. As a separate and distinct affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, that Plaintiff’s Complaint and each Cause of Action alleged therein, or some of them, are barred because Plaintiff and the alleged putative class Plaintiff seeks to represent have not suffered any injury from any alleged act or failure by Defendant.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Knowledge of Work)

27. As a separate and distinct defense, Defendant alleges that, if Plaintiff “worked” hours for which compensation was not paid, Defendant had no knowledge, or reason to know, of such “work,” such “work” was not suffered or permitted by Defendant, and such “work” was undertaken without the consent or permission of Defendant.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No Willful Failure to Pay)

28. As a separate and distinct affirmative defense, Defendant alleges that the Second Cause of Action contained in Plaintiff’s Complaint pursuant to California Labor Code section 203, is barred because (1) there are *bona fide* disputes as to whether further compensation is due to Plaintiff and/or the class Plaintiff seeks to represent, and, if so, as to the amount of such further compensation (2) Defendant has not willfully failed to pay such additional compensation, if any, is owed, and (3) to impose waiting time penalties in this case would be inequitable and unjust.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Good Faith Dispute)

29. As a separate and distinct affirmative defense, Defendant is informed and believes that further investigation and discovery will reveal, and on that basis Defendant alleges, that any violation of the California Labor Code or an Order of the Industrial Welfare Commission was an act or omission made in good faith and Defendant had reasonable grounds for believing that its practices complied with applicable laws and that any such act or omission was not a violation of the California Labor Code or any Order of the Industrial Welfare Commission such that Plaintiff, and the alleged putative class Plaintiff seeks to represent, are not entitled to any penalties.

THIRTIETH AFFIRMATIVE DEFENSE

(*Bona Fide* Dispute)

30. As a separate and distinct affirmative defense, Defendant alleges that the penalties in Plaintiff’s Complaint are barred, or any penalties awarded must be minimized, because (1) there are *bona fide* disputes as to whether further compensation is due to Plaintiff and some or all of the allegedly putative class on whose behalf she seeks to collect wages and/or civil penalties, and, if so, as to the amount of such further compensation (2) Defendant has not willfully failed to pay such additional compensation, if any is owed, and (3) to impose penalties would be inequitable and unjust.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Exclusions From Regular Rate)

31. As a separate and distinct affirmative defense, Defendant is informed and believes that

1 further investigation and discovery will reveal facts supporting such defense, and on that basis alleges
2 that Plaintiff's claims are barred in whole or in part to the extent that the cited laws are not applicable,
3 and the work Plaintiff performed or employment falls within the exemptions, exceptions, or exclusions
4 provided under California law. Specifically, the Complaint, and each and every alleged cause of action,
5 is barred because the amounts alleged to have been inappropriately excluded from the regular rate of
6 pay for the purpose of calculating overtime, if excluded, were appropriately excluded pursuant to
7 applicable provisions of the California Division of Labor Standards Enforcement Policies &
8 Interpretations Manual (2002) § 49.1.2.4 (listing exclusions from regular rate under California law).

9 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

10 (Failure to Take Breaks Provided)

11 32. As a separate and affirmative defense to the Complaint and each purported cause of
12 action therein, Defendant alleges, based upon the belief that further investigation and discovery will
13 reveal facts supporting such defense, that Plaintiff or members of the putative class Plaintiff purports
14 to represent has no right to a premium payment under California Labor Code section 226.7 because,
15 to the extent, if any, that person did not take meal or rest breaks, it was because s/he: (1) failed to take
16 meal or rest breaks that were provided to her/him in compliance with California law; (2) chose not to
17 take meal or rest breaks that were authorized and permitted; or (3) waived her/his right to meal breaks
18 under California Labor Code section 512(a).

19 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

20 (*De Minimis*)

21 33. As a separate and distinct affirmative defense, Defendant alleges that some or all of the
22 hours worked by Plaintiff, and the alleged putative class members that Plaintiff seeks to represent, and
23 claimed as causing a violation of any laws relating to wage requirements were *de minimis* and do not
24 qualify as compensable hours worked within the meaning of the California Labor Code and the Wage
25 Order(s) issued by the California Industrial Wage Commission.

26 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

27 (Irregular and Brief)

28 34. As a separate and affirmative defense to the Complaint and each purported cause of

1 action therein, CWI alleges Plaintiff is barred from recovering damages or penalties because even if
2 she establishes such claims, her claims involve activities that are so irregular or brief in duration that
3 it would not be reasonable to require Defendant to compensate her for the time she allegedly spent on
4 it. *See Troester v. Starbucks Corp.*, 5 Cal. 5th 829, 835 (2018).

5 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

6 (Waiting Time Penalties – Absent, Refused or Avoided Payment)

7 35. As a separate and distinct affirmative defense, Defendant is informed and believes that
8 further discovery may disclose information supporting such affirmative defense, that Plaintiff’s claims
9 for waiting time penalties are barred because Plaintiff and/or some, or all, of the putative class
10 members Plaintiff seeks to represent, secreted or absented themselves to avoid payment of wages, or
11 refused payment fully tendered by Defendant, thereby relieving the employer of liability for waiting
12 time penalties under the Labor Code, including but not limited to section 203.

13 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

14 (No Willful or Intentional Failure to Comply)

15 36. As a separate and affirmative defense to the Complaint and each purported cause of
16 action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal
17 facts supporting such defense, that any purported violation of the Labor Code or an order of the
18 Industrial Welfare Commission was an act or omission made in good faith and CWI had reasonable
19 grounds for believing that the act or omission was not a violation of the Labor Code or any order of
20 the Industrial Welfare Commission and that, accordingly, they have not willfully or intentionally failed
21 to pay additional compensation to Plaintiff and/or the putative class members, or knowingly or
22 intentionally failed to comply with California Labor Code section 226(a), and no damages or penalties
23 should be awarded Plaintiff or any putative class members for any violation thereof that may be found
24 to exist, which Defendant denies.

25 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

26 (No Injury by Wage Statements)

27 37. As a separate and affirmative defense to Plaintiff’s Complaint, Defendant alleges that
28 Plaintiff and the putative class members are not entitled to any penalties pursuant to California Labor

1 Code § 226(e) because, with regard to each wage statement issued to Plaintiff and the putative class
2 members by Defendant, Plaintiff and putative class members could promptly and easily determine
3 from the wage statement all of the information set forth in California Labor Code § 226(e)(2)(B)(i)
4 through (iii).

5 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

6 (Conduct By Others)

7 38. As a separate and distinct affirmative defense, Defendant alleges that the Complaint
8 cannot be maintained against Defendant because any alleged losses or harms sustained by Plaintiff, if
9 any, which Defendant denies, resulted from causes other than any act or omission, if any, by
10 Defendant. Such parties acted without the knowledge, participation, approval or ratification of
11 Defendant, and Defendant had no duty to control the actions of such third party or third parties. This
12 defense is being asserted as a matter of right. Defendant believed discovery will establish facts to
13 support this assertion.

14 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

15 (Bus. & Prof. Code Section 17200 – No Penalties)

16 39. As a separate and affirmative distinct defense to the Complaint, Defendant alleges that
17 Plaintiff and/or the putative class she seeks to represent cannot recover penalties, such as those under
18 California Labor Code sections 203 and 226, pursuant to California Business and Professions Code
19 section 17200, *et seq.*

20 **FORTIETH AFFIRMATIVE DEFENSE**

21 (Bus. & Prof. Code Section 17200 – Unconstitutionally Vague and Overbroad)

22 40. As a separate and distinct affirmative defense, Defendant alleges that the prosecution of
23 a representative action on behalf of the general public under California Business and Professions Code
24 section 17200, *et seq.*, is unconstitutionally vague and overbroad and, as applied to the facts and
25 circumstances of this case, would constitute a denial of Defendant's due process rights, both
26 substantive and procedural, and right to equal protection in violation of the California Constitution
27 and the Fourteenth Amendment to the United States Constitution, in that it would prevent Defendant
28 from raising individual defenses against each putative class member. Indeed, the violation is both

1 procedural, by imposing a procedure that would render it impossible for Defendant to defend its
2 interests and property, and substantive, by imposing remedies constitutionally disproportionate to the
3 wrongs committed. *See People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005).

4 **FORTY-FIRST AFFIRMATIVE DEFENSE**

5 (Bus. & Prof. Code Section 17200 – Compliance With Obligations)

6 41. As a separate and affirmative defense, Defendant alleges that Plaintiff’s claims are
7 barred, in whole or in part, because of Defendant’s compliance with all applicable laws, statutes and
8 regulations, said compliance affording Defendant a safe harbor to any claim under California Business
9 and Professions Code section 17200, *et seq.*

10 **FORTY-SECOND AFFIRMATIVE DEFENSE**

11 (Bus. & Prof. Code Section 17200 –Equitable Relief Unavailable)

12 42. As a separate and affirmative defense to the Complaint and each purported cause of
13 action therein, Defendant alleges, based upon the belief that further investigation and discovery will
14 reveal facts supporting such defense, that Plaintiff’s claims are barred, in whole or in part, because
15 Plaintiff is not entitled to equitable relief as she has an adequate remedy at law.

16 **FORTY-THIRD AFFIRMATIVE DEFENSE**

17 (Offset/Set-Off)

18 43. As a separate and affirmative defense to the Complaint and each purported cause of
19 action therein, CWI alleges, based upon the belief that further investigation and discovery will reveal
20 facts supporting such defense, that Plaintiff’s claims are barred, in whole or in part, because they are
21 subject to the doctrines of set-off, offset and/or recoupment on the part of CWI.

22 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

23 (No Entitlement to Prejudgment Interest)

24 44. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff’s
25 Complaint, and each Cause of Action set forth therein, or some of them, fails to state a claim upon
26 which prejudgment interest may be granted because the damages claimed are not sufficiently certain
27 to allow an award of prejudgment interest.
28

1 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

2 (Failure to State Facts Sufficient for Attorneys' Fees)

3 45. As a separate and distinct affirmative defense, Defendant informed and believes that a
4 reasonable opportunity for investigation and discovery will reveal, and on that basis allege, that
5 Plaintiff's Complaint, and each Cause of Action alleged therein, or some of them, are barred, in whole
6 or in part, because Plaintiff has failed to state facts sufficient to entitle her to costs of suit incurred
7 herein and/or an award of attorneys' fees.

8 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

9 (Bad Faith and/or Frivolous Claims)

10 46. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's
11 Complaint, and each Cause of Action set forth therein, are unreasonable, were filed in bad faith, and/or
12 are frivolous and, for such reasons, justify an award of attorneys' fees and costs against Plaintiff and/or
13 her attorneys pursuant to California law including, but not limited to California Labor Code section
14 218.5, California Code of Civil Procedure section 128.5 and/or Government Code section 12965(b).

15 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

16 (Failure to Exhaust Internal Remedies)

17 47. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's
18 Complaint, and each Cause of Action set forth therein are barred, in whole or in part, by Plaintiff's
19 failure to exhaust appropriate internal remedies.

20 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

21 (Failure to Exhaust Administrative Remedies)

22 48. As a separate and affirmative defense to the Complaint, and each purported Cause of
23 Action therein, Defendant alleges that Plaintiff's Complaint and each purported Cause of Action
24 therein is barred to the extent that Plaintiff has failed properly exhaust all of the contractual,
25 administrative and/or statutorily required remedies prior to filing suit.

26 **FORTY-NINTH AFFIRMATIVE DEFENSE**

27 (Duplicative Penalties – Violation of Due Process)

28 49. As a separate and distinct affirmative defense, Defendant alleges that that the imposition

1 of replicating individual penalties would deprive Defendant of its constitutional rights to due process
2 under the Fourteenth Amendment of the United States Constitution and under the Constitution and
3 laws of the State of California. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003);
4 *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005).

5 **FIFTIETH AFFIRMATIVE DEFENSE**

6 (Excessive Fines)

7 50. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's
8 Complaint is barred because an award of penalties would result in the imposition of excessive fines in
9 violation of the Eighth Amendment to the United States Constitution and Article I, Section 7 of the
10 California Constitution.

11 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

12 (Failure to Mitigate)

13 51. As a separate and distinct affirmative defense, Defendant is informed and believes that
14 a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that
15 Plaintiff and or the putative class members failed to exercise reasonable care to mitigate damages, if
16 any were suffered. By failing to report any allegations of unpaid or untimely wages, non-compliant
17 wage statements, and/or missed meal/rest breaks, Plaintiff and/or the putative class members failed to
18 mitigate their damages, and if the Court determines that Plaintiff has the right to any recovery against
19 Defendant, the Court should reduce and/or eliminate the recovery by such failure.

20 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

21 (Federal Preemption)

22 52. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's and/or
23 the putative class members claims are barred, in whole or in part, by federal law.

24 **FIFTY-THIRD AFFIRMATIVE DEFENSE**

25 (Plaintiff Failed To Request Seating)

26 53. As a separate and distinct affirmative defense, Defendant is informed and believes, and
27 on that basis allege, that Plaintiff's claim for failure to provide suitable seating fails as a matter of law
28 because Plaintiff failed to request suitable seating, or any seating whatsoever, during her employment.

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FIFTY-FOURTH AFFIRMATIVE DEFENSE

(Nature of Work Does Not Reasonably Permit Seating)

54. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff’s claim for failure to provide suitable seating fails as a matter of law because the nature of the work does not reasonably permit the use of seats under the totality of the circumstances, including but not limited to Defendant’s business judgment and the physical layout of the workplace.

ADDITIONAL AFFIRMATIVE DEFENSES

Defendant presently has insufficient knowledge or information upon which to form a belief as to whether there may be additional, as yet unstated, defenses and therefore Defendant reserves its right to assert additional defenses or claims which may become known during the course of discovery.

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PRAYER FOR RELIEF

WHEREFORE, Defendant prays that:

1. The Complaint and each purported cause of action alleged therein be dismissed in its entirety, with prejudice;
2. Plaintiff takes nothing by the instant action;
3. That class certification be denied;
4. Defendant be awarded judgment in its favor and against Plaintiff on all causes of action;
5. Defendant be awarded its attorneys’ fees and costs incurred herein, including but not limited to attorneys’ fees and costs provided under California Labor Code section 218.5; and
6. The Court grants Defendant such further relief as it deems just and proper.

Dated: September 8, 2020



REBECCA ARAGON
HOVANNES G. NALBANDYAN
LAURA E. SCHNEIDER
LITTLER MENDELSON, P.C.
Attorneys for Defendant
CWI, INC. D/B/A CAMPING WORLD, A
KENTUCKY CORPORATION

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 633 West 5th Street, 63rd Floor, Los Angeles, California 90071. On September 8, 2020, I served the within document(s):

DEFENDANT’S ANSWER TO PLAINTIFF’S UNVERIFIED COMPLAINT (CLASS ACTION)

By electronic service. Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed below.

James R. Hawkins
Samantha A. Smith
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Samantha@jameshawkinsaplc.com

Attorneys for Plaintiff

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 8, 2020, at Los Angeles, California.



Sarah Fleming

4841-4359-2136.2 099507.1015

Exhibit D

1 REBECCA ARAGON, Bar No. 134496
Raragon@littler.com
2 HOVANNES G. NALBANDYAN, Bar No. 300364
Hnalbandyan@littler.com
3 LAURA E. SCHNEIDER, Bar No. 326077
Lschneider@littler.com
4 **LITTLER MENDELSON, P.C.**
633 W. Fifth Street, 63rd Floor
5 Los Angeles, CA 90071
Telephone: 213.443.4300
6 Fax No.: 213.443.4299

7 Attorneys for Defendant
CWI, INC. D/B/A CAMPING WORLD, A
8 KENTUCKY CORPORATION

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

12 KAYLA MILLIGAN, and on behalf of all
others similarly situated,

13 Plaintiffs,

14 v.

15 CWI, INC. d/b/a CAMPINGWORLD, a
Kentucky Corporation, and DOES 1
16 through 50, inclusive,

17 Defendants.

Case No. CIVDS2013999

**DEFENDANT’S NOTICE TO STATE
COURT AND ALL ADVERSE PARTIES OF
REMOVAL OF CIVIL ACTION**

[ASSIGNED FOR ALL PURPOSES TO HON.
DAVID COHN, DEPT. S-26]

Complaint Filed: July 8, 2020
Trial Date: None Set

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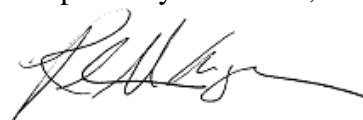
1 **TO THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,**
2 **COUNTY OF LOS ANGELES, PLAINTIFF KAYLA MILLIGAN AND HER COUNSEL OF**
3 **RECORD:**

4 **PLEASE TAKE NOTICE** that, on September 8, 2020, Defendant CWI, INC. D/B/A
5 CAMPING WORLD, A KENTUCKY CORPORATION (hereinafter, “Defendant”), by and through
6 its attorneys, Rebecca Aragon, Hovannes Nalbandyan, and Laura Schneider of Littler Mendelson,
7 P.C., filed a Notice of Removal in the United States District Court for the Central District of
8 California to effect removal of the lawsuit entitled: *KAYLA MILLIGAN V. CWI, INC., et al.*, in San
9 Bernardino Superior Court, Case No. CIVDS2013999. The basis for original jurisdiction of the
10 United States District Court for the Central District of California over the parties is grounded in the
11 Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). A true and correct copy of
12 Defendant’s Notice of Removal and accompanying exhibits are attached hereto and incorporated
13 herein by reference as **Exhibit 1**.

14 **PLEASE TAKE FURTHER NOTICE** that, by the filing of such Notice of Removal and by
15 the filing herein of this Notice to State Court and All Adverse Parties of Removal of Civil Action,
16 the above-entitled action has been removed from this Court to the United States District Court for
17 the Central District of California pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and this Court may
18 proceed no further unless and until the case is remanded.

19 Dated: September 9, 2020

Respectfully submitted,

20 

21 _____
22 REBECCA ARAGON
23 HOVANNES G. NALBANDYAN
24 LAURA E. SCHNEIDER
25 **LITTLER MENDELSON, P.C.**
26 Attorneys for Defendant
27 CWI, INC. D/B/A CAMPING WORLD, A
28 KENTUCKY CORPORATION

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 Telephone: 213.443.4300
 6 Fax No.: 213.443.4299

7 Attorneys for Defendant
 8 CWI, INC. D/B/A CAMPING WORLD, A
 KENTUCKY CORPORATION

9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 KAYLA MILLIGAN, and on behalf
 13 of all others similarly situated,

14 Plaintiffs,

15 v.

16 CWI, INC. d/b/a
 17 CAMPINGWORLD, a Kentucky
 Corporation, and DOES 1 through
 18 50, inclusive,

19 Defendants.

Case No. 5:20-cv-01847

**DECLARATION OF BRENT
 MOODY IN SUPPORT OF
 DEFENDANT’S NOTICE OF
 REMOVAL TO FEDERAL COURT**

[28 U.S.C. §§ 1332, 1441, & 1446]

Complaint filed: July 8, 2020
 (San Bernardino Superior Court,
 Case No. CIVDS2013999)

Trial Date: None Set

DECLARATION OF BRENT MOODY

I, Brent Moody, declare as follows:

1. I am the President of CWI, Inc. In this capacity, I have personal knowledge and/or first-hand knowledge of the facts set forth in this declaration, or I have knowledge of such facts based on my review of the business records and files that were kept and created in the regular course of Defendant CWI, Inc.’s (“Defendant”) business. I have reviewed Defendant’s records and am familiar with Defendant’s record keeping practices. I am authorized to make this declaration on behalf of Defendant and if called as a witness, I could and would testify competently to such facts contained herein.

2. I am also familiar with Defendant’s human resource data, including data related to the dates individuals worked for Defendant, the number of individuals employed by Defendant, and their base pay rates and hours worked. All of the information is based on documents created and kept and practices conducted in the regular course of Defendant’s business.

3. Based on a review of Defendant’s employment records, Defendant employed a total of approximately, but no fewer than, 477 hourly, non-exempt employees in its California locations during the putative class period of July 8, 2016 to the present.

4. Based on a review of Defendant’s employment records, from July 8, 2016 to the present, for the hourly, non-exempt employees in its California locations, the average hourly rate was approximately \$17.11 per hour.

5. Defendant’s hourly, non-exempt employees who work in its California locations are issued wage statements every other week. These employees worked approximately 40,700 workweeks from July 8, 2016 through the present.

6. At least 205 employees have separated from employment with Defendant since July 8, 2017. The average hourly rate for these terminated, hourly, and non-exempt employees was \$18.10.

1 7. Between July 8, 2019 and the present, Defendant has issued approximately
2 6,070 wage statements to its hourly, non-exempt employees.

3 8. Based on a review of Defendant's employment records, from July 8, 2016
4 to the present, Plaintiff worked an approximate total of 132 workweeks, worked an
5 average of .11 hours of overtime and double-time per workweek, and received an
6 average sales commission amount of \$3.38 per workweek and a weekly bonus average
7 of \$40.14 for each week that she worked. Assuming Plaintiff was not paid any overtime
8 or double-time premiums for her sales bonuses and commissions from July 8, 2016 to
9 the present, as alleged in her Complaint, Plaintiff is purportedly owed \$2.35 per
10 workweek for overtime and double-time premiums related to her commissions and
11 bonuses.

12 9. In my capacity as President, and by virtue of my job duties, I am also
13 familiar with the corporate structure for Defendant's corporate entities. Defendant is a
14 private business entity, and is not a state, state official or other governmental entity
15 exempt from the Class Action Fairness Act.

16 10. Defendant was, at the time this action was filed and at the time of this
17 declaration, a corporation organized under the laws of the State of Kentucky. Defendant
18 maintains its principal place of business at 650 Three Springs Road in Bowling Green
19 Kentucky, which is where the corporate headquarters are located, and where
20 Defendant's corporate books are maintained. Defendant's executive and administrative
21 offices are also located in Kentucky.

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

24 Executed in Lincolnshire, Illinois, on this 3rd day of September 2020.

25
26 

27 BRENT MOODY, President

28 4839-8819-0153.1 099507.1015

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Camping World Hit with Class Action Over Alleged California Labor Code Violations](#)
