NO. 20-1573

In the

Supreme Court of the United States

VIKING RIVER CRUISES, INC.,

Petitioner,

v.

ANGIE MORIANA,

Respondent.

On Writ of Certiorari to the California Court of Appeal

JOINT APPENDIX

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January 31, 2022

Petition for Writ of Certiorari Filed May 10, 2021
Petition for Writ of Certiorari Granted December 15, 2021

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SUPREME COURT OF CALIFORNIA

No. S265257

ANGIE MORIANA,

Plaintiff-Respondent,

v.

VIKING RIVER CRUISES, INC.,

Defendant-Appellant.

RELEVANT DOCKET ENTRIES

Date Filed	Description
10/28/2020	Petition for review filed
* * *	
11/17/2020	Answer to petition for review filed
11/30/2020	Reply to answer to petition filed
12/09/2020	Petition for review denied
* * *	

CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT

No. B297327

ANGIE MORIANA,

Plaintiff-Respondent,

v.

VIKING RIVER CRUISES, INC.,

Defendant-Appellant.

RELEVANT DOCKET ENTRIES

Date Filed	Description
05/06/2019	Notice of appeal lodged/received.
	* * *
12/20/2019	Appellant's opening brief.
12/20/2019	Appellant's appendix filed.
	* * *
02/21/2020	Respondent's brief.
	* * *
06/10/2020	Appellant's reply brief.
	* * *

Date Filed	Description
08/04/2020	Filed additional cites. By Respondent Moriana re Bautista v. Fantasy Activewear, Inc. (June 21, 2020, B297070)_ Cal.App.5th_ [2020 WL 4260346]. This case was certified for publication on July 24, 2020. [letter dated July 31, 3030]
08/12/2020	Cause argued and submitted.
09/18/2020	Opinion filed. (Signed Unpublished) The order is affirmed. Angie Moriana is awarded her costs on appeal. Dhanidina, J., Lavin Acting P.J. and Egerton, J.
* * *	
12/15/2020	Remittitur issued.
* * *	

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

No. BC687325

ANGIE MORIANA,

Plaintiff,

v.

VIKING RIVER CRUISES, INC.,

Defendant.

RELEVANT DOCKET ENTRIES

Date Filed	Description
12/18/2017	COMPLAINT FOR CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL AC ("PAGA") [LABOR CODE 2698, CI SEQ. FOR: 1. FA[I]LURE TO PAY ALL, WAGES; ETC
* * *	
12/27/2017	Complaint -FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL AC ("PAGA") [Labor Code --2698, et seq.] for:
* * *	

Date Filed	Description
01/31/2018	DEFENDANT VIKING RIVER CRUISES, INC.'S ANSWER TO PLAINTIFF'S UNVERIFIED FIRST AMENDED COMPLAINT
* * *	
03/23/2018	DEFENDANT VIKING RIVER CRUISES, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS
03/23/2018	DEFENDANT VIKING RIVER CRUISES, INC.'S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS
* * *	
04/04/2018	STIPULATION RE DEFENDANTS MOTION TO COMPEL ARBITRATION AND STAY
* * *	
04/12/2018	DEFENDANT VIKING RIVER CRUISES, INC.'S AMENDED NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS

Date Filed	Description
* * *	
06/07/2018	PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL ARBITRATION
* * *	
06/14/2018	DEFENDANT VIKING RIVER CRUISES, INC.'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS
* * *	
06/22/2018	NOTICE OF RULING ON DEFENDANT'S MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS
* * *	
07/24/2018	DEFENDANT VIKING RIVER CRUISES, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS SECOND MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS; REQUEST FOR STATEMENT OF DECISION
* * *	
07/24/2018	DEFENDANT VIKING RIVER CRUISES, INC.'S NOTICE OF SECOND MOTION AND

Date Filed	Description
	MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS
* * *	
08/15/2018	DEFENDANT VIKING RIVER CRUISES, INC.'S SECOND AMENDED NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS
08/15/2018	DEFENDANT VIKING RIVER CRUISES, INC.'S AMENDED NOTICE OF SECOND MOTION AND MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS
09/19/2018	[PROPOSED] SECOND AMENDED COMPLAINT FOR CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL AC ("PAGA") [LABOR CODE 2698, ET SEQ.] FOR :; ETC.
09/19/2018	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT
* * *	

Date Filed	Description
09/19/2018	PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT
* * *	
09/28/2018	DEFENDANT VIKING RIVER CRUISES, INC.'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT
09/28/2018	PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL ARBITRATION
10/04/2018	Reply (plaintiff's reply to defendant's opposition to plaintiff's motion for l.eave fot file second amended complaint)
10/04/2018	Defendant's Reply Iso Second Motion to Compel Arbitration and Stay Proceedings
* * *	
11/20/2018	Other - (Court's Ruling)
* * *	
11/28/2018	Complaint (Second Amended for Civil Penalties)
11/29/2018	Notice of Ruling (on plaintiff's motion for leave to amend)
* * *	

Date Filed	Description
01/02/2019	Answer
01/08/2019	Motion to Compel (DEFENDANT VIKING RIVER CRUISES INC.'S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS)
01/08/2019	Memorandum of Points & Authorities
* * *	
01/17/2019	Opposition (TO DEFENDANT'S MOTION)
* * *	
01/24/2019	Reply (IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS)
* * *	
02/28/2019	Notice (PLAINTIFF?S NOTICE OF NEW AUTHORITY IN SUPPORT OF PLAINTIFF?S OPPOSITION TO DEFENDANT?S MOTION TO COMPEL ARBITRATION)
* * *	
03/18/2019	Notice of Ruling
05/01/2019	Appeal - Notice of Appeal/Cross Appeal Filed
* * *	

Second Amended Complaint, *Moriana v. Viking River Cruises, Inc.* (Cal. Super. Ct. Nov. 28, 2018)

Plaintiff ANGIE MORIANA, on behalf the State of California and all other similarly situated aggrieved employees (hereinafter collectively referred to as "Plaintiffs"), complains and alleges as follows against Defendants VIKING RIVER CRUISES, INC. and DOES 1 to 100 (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and belief, allege as follows:

I.

INTRODUCTION

1. This is a representative action seeking recovery of civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code ("Labor Code") §§2698, et seq. PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of themselves and other aggrieved current and former employees to recover civil penalties for Defendant's violations of the Labor Code, and all applicable Industrial Welfare Commission ("IWC") Orders.

2. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from one (1) year preceding the filing of the original Complaint herein, up to and through the time of trial for this matter although this should not automatically be considered the statute of limitations for any cause of action herein.

3. Further, the appropriate time period for this action does not include the time before September 29, 2016. All claims herein that may have occurred during that time period were resolved in *Colombo, et al. v. Viking River Cruises, et al.*, San Bernardino County Superior Court Case No. CIVDS 1611608, and are not part of this action.

4. The relevant job titles held by the California citizens in this action are Defendants' "Sales Representatives" (hereinafter including but not limited to Ocean Specialists, Outbound Sales Agents, Inbound Sales Agents, Travel Agent Desk, Inside Sales, Direct Sales, Group Sales, Reservation Sales Agents, and/or Air Department Agents, as well as any other job title with substantially similar duties and responsibilities as the aforementioned) (hereinafter, the "aggrieved employees"). Any differences in job activities between the different individuals in these positions were and are legally insignificant to the issues presented by this action.

SUMMARY OF CLAIMS

5. With regard to Defendants' aggrieved employees, Defendants have:

a. Failed to pay straight time, minimum and/or overtime wages for all hours worked;

b. Failed to pay overtime wages at the appropriate overtime pay rate;

c. Failed to provide all meal periods;

d. Failed to authorize and permit all paid rest periods;

e. Violated Labor Code §204;

f. Violated Labor Code §2751;

g. Derivatively failed to timely furnish accurate itemized wage statements;

h. Derivatively violated Labor Code §§201-202; and

i. Independently violated Labor Code § §201-202.

6. Such policies and practices, as described herein, violate the Labor Code, and therefore trigger civil penalties. Therefore, Plaintiff ANGIE MORIANA, on behalf of all aggrieved employees, brings this representative PAGA action pursuant to violations of the Labor Code, seeking penalties for the violations alleged herein, reasonable attorney's fees and costs, and other relief as deemed proper.

II.

PARTIES

PLAINTIFF ANGIE MORIANA

7. Plaintiff ANGIE MORIANA is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

8. Plaintiff ANGIE MORIANA worked for Defendants as a Sales Representative in Los Angeles County, California from approximately May 31, 2016 to June 15, 2017.

9. Plaintiff ANGIE MORIANA seeks recovery herein from Defendants because with regard to Plaintiff ANGIE MORIANA, while acting for Defendants in her capacity as a Sales Representative, Defendants have:

a. Failed to pay straight time, minimum and/or overtime wages for all hours worked;

b. Failed to pay overtime wages at the appropriate overtime pay rate;

c. Failed to provide all meal periods;

d. Failed to authorize and permit all paid rest periods;

e. Violated Labor Code §204;

f. Violated Labor Code §2751;

g. Derivatively failed to timely furnish accurate itemized wage statements;

h. Derivatively violated Labor Code §§201-202; and

i. Independently violated Labor Code §§201-202.

DEFENDANT, VIKING RIVER CRUISES, INC.

10. Defendant VIKING RIVER CRUISES, INC. is now and/or at all times mentioned in this Complaint was a California corporation and the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

DOES 1 TO 100, INCLUSIVE

11. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business in California.

12. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1

to 100 are sued under such fictitious names pursuant to California Code of Civil Procedure ("CCP") §474.

13. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

ALL DEFENDANTS

14. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

15. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

16. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

17. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint venture, partnership and common enterprise.

18. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each

and every one of the other Defendants in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

19. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

20. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

III.

JURISDICTION AND VENUE

21. The California Superior Court has jurisdiction in this matter due to Defendants' aforementioned violations of California statutory law and/or related common law principles.

22. The California Superior Court also has jurisdiction in this matter because the aggregate relief sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

23. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, the aggrieved employees were all California citizens and Defendant VIKING RIVER CRUISES, INC. is a California corporation. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

24. Venue is proper in Los Angeles County pursuant to CCP §395(a) and CCP §395.5 in that liability arose there because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, and/or has an agent therein.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699

(On Behalf of the Aggrieved Employees)

(Against All Defendants)

25. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

A. FAILURE TO PAY ALL WAGES

26. Labor Code §204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

27. Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee."

28. Labor Code §1182.12, effective July 1, 2014, states: "Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for

all industries shall be not less than nine dollars ($9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars ($10) per hour." Labor Code §1182.12(b)(1)(A) raises that to ten dollars and fifty cents ($10.50) per hour for 2017 and Labor Code §1182.12(b)(1)(B) raises it to eleven dollars ($11.00) per hour beginning January 1, 2018.

29. Labor Code §§1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

30. Further, pursuant to Labor Code §1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

31. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

32. Pursuant to the IWC Wage Order(s), Defendants are required to pay the members of the Wage Class for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

33. Defendants, as a matter of established company policy and procedure, at each and every one

of the individual facilities owned and/or operated by Defendants, consistently:

a. Administered a uniform company policy and practice as to the pay policies regarding the aggrieved employees;

b. Required the aggrieved employees to be at their designated work stations at the beginning of their scheduled shifts, ready to begin taking calls and receiving emails;

c. Did not allow the aggrieved employees to clock in more than five minutes before the begin of their scheduled shift; but

d. Required the aggrieved employees, before they clocked in, to log on to Defendants' computer systems, open their email application and/or open and load software, including but not limited to Evolution, PAX Point, Excel, ADP, Avaya (the telephone system), Coldstar and/or Workforce Management; and as such,

e. Required the aggrieved employees to work without paying all straight time, minimum wages and overtime wages due for the time the aggrieved employees were subject to Defendants' control.

34. In or about April 2017, Defendants established new company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, as follows:

a. Defendants now place the time clocks on the wall, and clock-ins and clock-outs are performed using that wall unit; but

b. The aggrieved employees are not allowed to clock in before they are ready to receive all emails and telephone calls at the beginning of their scheduled shift; and

c. The aggrieved employees are still required to be ready to receive all emails and telephone calls at the beginning of their scheduled shift; and

d. The aggrieved employees are not allowed to clock in more than five minutes before the begin of their scheduled shift; and as such

e. Defendants require the aggrieved employees to work without paying all straight time, minimum wages and overtime wages due for the time the aggrieved employees were and are subject to Defendants' control.

35. Because Defendants required the aggrieved employees to remain under Defendants' control without paying therefore, this resulted in the aggrieved employees earning less than the legal minimum wage in the State of California.

36. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §218 and Labor Code §1194(a) to recovery by the aggrieved employees of all applicable civil penalties and wages.

37. Pursuant to Labor Code §2699(g)(1)and/or any other applicable statute, the aggrieved employees request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

B. FAILURE TO PAY OVERTIME WAGES AT THE LEGAL OVERTIME PAY RATE

38. Labor Code §204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

39. Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee."

40. The "regular rate of pay" includes "all [applicable] remuneration paid to, or on behalf of the employee." See, e.g., 29 U.S.C. §207(3). The California Industrial Welfare Commission applies this standard for determining an employee's regular rate of pay for overtime calculation purposes.

41. Labor Code §§1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

42. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, consistently:

a. Administered a uniform company policy and practice regarding the payment of wages,

including but not limited to commissions, bonuses and/or performance awards, to the aggrieved employees;

b. Scheduled and/or required the aggrieved employees to work in excess of eight (8) hours per workday and/or in excess of forty (40) hours per workweek;

c. Paid the aggrieved employees commissions, bonuses and/or performance awards (and the like); and

d. Failed to pay the aggrieved employees for all work accomplished in excess of forty (40) hours per week at the appropriate overtime rate, reflecting all applicable forms of remuneration, including but not limited to said commissions, bonuses and/or performance awards (and the like), as required by law.

43. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §218 and Labor Code §1194(a) to recovery by the aggrieved employees of all applicable civil penalties and wages.

44. Pursuant to Labor Code §2699(g)(1)and/or any other applicable statute, the aggrieved employees request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

C. FAILURE TO PROVIDE ALL MEAL PERIODS

45. Labor Code §226.7(b) provides that "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

46. Labor Code §512 provides that "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

47. Labor Code §516 provides that the Industrial Welfare Commission "may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers."

48. Section 11(A) of the IWC Wage Order(s) provides that "Unless the employee is relieved of all

duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

49. Section 11(B) of the IWC Wage Order(s) provides that "If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."

50. Labor Code §204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

51. On one or more occasions, certain aggrieved employees worked over five (5) hours per shift and therefore were entitled to a meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

52. Further, on one or more occasions, certain aggrieved employees worked over ten (10) hours per shift and therefore were entitled to a second meal period of not less than 30 minutes.

53. These aggrieved employees did not validly or legally waive their meal periods, by mutual consent with Defendants or otherwise.

54. These aggrieved employees did not enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

55. As such, as a matter of Defendants' established company policy, Defendants failed to always comply with the meal period requirements established by Labor Code §226.7, Labor Code §512, Labor Code §516 and Section 11 of the IWC Wage Order(s) by failing to always provide these aggrieved employees with a first and in some cases a second legally compliant meal period, and creates an entitlement to recovery by the aggrieved employees of penalties pursuant to Labor Code §§2698, et seq.

56. As a matter of Defendants' established company policy, Defendants required the aggrieved employees to clock out for meal breaks, but due to the demands of their job, Defendants' policies and/or Defendants' understaffing, certain aggrieved employees did not always get meal breaks, as evidenced by objective evidence including but not limited to Evolution, Excel, electronic mail and contracts sent to travel agents, all of which have date/time stamps that show work being performed during breaks.

57. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §218 and Labor Code §1194(a) to recovery by the aggrieved employees of all applicable civil penalties and wages.

58. Pursuant to Labor Code §2699(g)(1) and/or any other applicable statute, the aggrieved employees

request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

D. FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS

59. Labor Code §226.7(b) provides that "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

60. Labor Code §516 provides that the Industrial Welfare Commission "may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers."

61. Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

62. Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an employee a rest period in accordance with the applicable

provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

63. Labor Code §204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

64. Here, certain aggrieved employees sometimes worked over four (4) hours per shift and therefore were entitled to a rest period of not less than ten (10) minutes prior to exceeding four (4) hours of employment.

65. As a matter of Defendants' established company policy, Defendants failed to always authorize and permit the required rest periods established by Labor Code §226.7 and Labor Code §516 and Section 12 of the IWC Wage Order(s), and creates an entitlement to recovery by the aggrieved employees of penalties pursuant to Labor Code §§2698, et seq.

66. As a matter of Defendants' established company policy, Defendants required the aggrieved employees to clock out for rest breaks, but due to the demands of their job, Defendants' policies and/or Defendants' understaffing, certain aggrieved employees did not always get rest breaks, as evidenced by objective evidence including but not limited to Evolution, Excel, electronic mail and contracts sent to travel agents, all of which have date/time stamps that show work being performed during breaks.

67. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to

Labor Code §218 and Labor Code §1194(a) to recovery by the aggrieved employees of all applicable civil penalties and wages.

68. Pursuant to Labor Code §2699(g)(1)and/or any other applicable statute, the aggrieved employees request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

E. VIOLATIONS OF LABOR CODE §204

69. Labor Code §204(a) provides in pertinent part that "All wages, other than those mentioned in (Labor Code) Section 201,201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month." See also *Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 669.

70. Here, Defendants pay the aggrieved employees' commissions only once per month, even though said commissions are reasonably calculable such that they may be paid in compliance with Labor Code §204.

71. The aggrieved employees are not executive, administrative or professional employees, and as such, for purposes of this cause of action, are not covered by the Fair Labor Standards Act.

72. Regarding Labor Code §204(c), the aggrieved employees were not covered by a collective bargaining agreement that provides different pay arrangements than those set forth in Labor Code §204.

73. Regarding Labor Code §204(d), the aggrieved employees were not paid requisite wages not more than seven calendar days following the close of the payroll period.

74. Defendants had a consistent and uniform policy, practice and procedure of failing to comply with Labor Code §204 with regard to certain aggrieved employees.

75. Thus, certain aggrieved employees are entitled to recovery pursuant to Labor Code §204.

76. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §218 and Labor Code §1194(a) to recovery by the aggrieved employees of all applicable civil penalties and wages.

77. Pursuant to Labor Code §2699(g)(1) and/or any other applicable statute, the aggrieved employees request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

F. VIOLATIONS OF LABOR CODE §2751

78. Labor Code §2751(a) states: "Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be

in writing and shall set forth the method by which the commissions shall be computed and paid."

79. Further, Labor Code §2751(b) states in pertinent part: "The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee."

80. During the relevant time period, Defendants had a consistent and uniform policy, practice and procedure, when entering into a contract of employment with the aggrieved employees for services to be rendered within California, with the contemplated method of payment involving commissions, of failing to utilize a written contract setting forth the method by which the commissions shall be computed and paid. Furthermore, the commission agreements changed monthly and were never signed by the aggrieved employees.

81. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employment practices as described herein is unlawful and creates an entitlement to all applicable civil penalties.

82. Pursuant to Labor Code §2699(g)(1) and/or any other applicable statute, the aggrieved employees are also entitled to an award of costs and reasonable attorneys' fees.

G. DERIVATIVE FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

83. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of

each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee ... (4) all deductions ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid ... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period and the corresponding number of hours worked at each hourly rate by the employee ....".

84. Further, the IWC Wage Orders §7(A) states in pertinent part: "(A) Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded ... (5) Total hours worked in the payroll period and applicable rates of pay ...."

85. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §7(A), California employers are required to maintain accurate records pertaining to the total hours worked for Defendants by the aggrieved employees, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

86. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders §7(A),

Defendants did not and still do not furnish each of the members of the aggrieved employees with an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

87. As set forth herein in prior causes of action, Defendants allegedly failed to pay the aggrieved employees all wages due and owing.

88. As a derivative result of this failure to pay wages and as a pattern and practice in violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and do not maintain accurate records pertaining to the total hours worked for Defendants by the members of the aggrieved employees, including but not limited to, beginning and ending of each work period, meal period interval, total daily hours worked, total hours worked per pay period, and the applicable rates of pay.

89. Pursuant to *Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, employers who fail to provide accurate itemized wage statements are subject to PAGA penalties even when the mistake is inadvertent and/or promptly corrected, and even though employees admittedly suffered no injury; said employees are permitted to recover PAGA penalties without needing to prove the "injury" and "knowing and intentional" elements of a Labor Code §226(e) claim. As such, the aggrieved employees are entitled

to recovery of penalties pursuant to Labor Code §§2698, et seq.

90. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employment practices as described herein is unlawful and creates an entitlement to all applicable civil penalties.

91. Pursuant to Labor Code §2699(g)(1), §226(g), and/or any other applicable statute, the aggrieved employees are also entitled to an award of costs and reasonable attorneys' fees.

H. DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202

92. If an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

93. The aggrieved employees are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

94. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, as set forth above, according to amendment or proof.

95. As set forth above, Defendants willfully failed to pay the aggrieved employees their entire wages due and owing at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

96. Defendants' willful failure to pay wages to the aggrieved employees violates Labor Code §§201-202 because Defendants knew or should have known wages were due to the aggrieved employees, as set forth above, but Defendants failed to pay them.

97. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employment practices as described herein is unlawful and creates an entitlement to all applicable civil penalties.

98. Pursuant to Labor Code §2699(g)(1) and/or any other applicable statute, the aggrieved employees are also entitled to an award of costs and reasonable attorneys' fees.

I. INDEPENDENT VIOLATIONS OF LABOR CODE §§201-202

99. If an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

100. The aggrieved employees are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

101. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of certain of Defendants' former aggrieved employees, including commission wages that were earned and calculable at the time of separation, according to amendment or proof.

102. Defendants willfully failed to pay the aggrieved employees all wages due and owing at the time of their termination and/or within seventy-two (72) hours of their resignation. For example, Plaintiff ANGIE MORIANA was terminated on June 1, 2017. However, she was not paid her final commissions until July 10, 2017.

103. Defendants' willful failure to timely pay final wages to the aggrieved employees violates Labor Code §§201-202 because Defendants knew or should have known final wages were due to the aggrieved employees by a date certain, but Defendants failed to pay them on a timely basis on or before that deadline.

104. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employment practices as described herein is unlawful and creates an entitlement to all applicable civil penalties.

105. Pursuant to Labor Code §2699(g)(1) and/or any other applicable statute, the aggrieved employees are also entitled to an award of costs and reasonable attorneys' fees.

J. PENALTIES ASSESSED

106. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") (or any of its departments, divisions, commissions, board agencies or employees), such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code §2699(f) (which

establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable civil penalties, including but not limited to the following:

a. As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars ($100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation;

b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code §§ 1-556, in the amount of $50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and $100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid;

c. As applicable, civil penalties under Labor Code §1197.1 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code § § 1194 and 1197, in the amount of $100 for each underpaid aggrieved employee for each pay period the aggrieved employee was intentionally underpaid, and $250 for each subsequent violation for each underpaid

aggrieved employees regardless of whether the initial violation was intentionally committed;

a. As applicable, civil penalties under Labor Code §210 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), (for each employee who is/was not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205,205.5 and 1197.5) in the amount of a civil penalty of $100 for each aggrieved employee per pay period for each initial violation, and $200 for each aggrieved employee per pay period for each subsequent violation;

b. As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of $250 for each aggrieved employee per pay period for each violation and $1,000 for each aggrieved employee per pay period for each subsequent violation;

c. As applicable, civil penalties under Labor Code §256 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days; and

d. Any and all additional applicable civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

107. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to all aggrieved employees.

108. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to Labor Code §§2699(g)(1) and any other applicable statute.

109. Labor Code §2699.3(a) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699 .5 shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

110. Labor Code §2699.3(c)(1) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and

Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

111. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code §2699.3(a) and §2699.3(c) apply to this action.

112. On October 12, 2017, Plaintiffs complied with Labor Code §2699.3(a) and Labor Code §2699.3(c) in that Plaintiffs gave written notice by online filing with the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Attached hereto as Exhibit "I" is Plaintiffs' LWDA letter.

113. Labor Code §2699.3(a) further states in pertinent part: "(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699."

114. As of December 16, 2017 (65 calendar days after Plaintiffs' October 12, 2017 LWDA letter was filed online), Plaintiffs had not received any notification that the LWDA intended to investigate the alleged violations. As such, Plaintiffs have

complied with Labor Code §2699.3(a) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

115. Further, as of November 14, 2017 (33 calendar days after Plaintiffs' October 12, 2017 LWDA letter was mailed via certified mail), Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

As to the First Cause of Action for Penalties Pursuant to Labor Code §2699:

a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely independent and apart from other penalties in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation;

a. For civil penalties pursuant to Labor Code §558, in addition to and entirely independent and apart from other penalties in the Labor Code, as follows:

i. For any initial violation, fifty dollars ($50) for each aggrieved underpaid employee for each pay period for which the employee was underpaid; and

ii. For each subsequent violation, one hundred dollars ($100) for each aggrieved underpaid employee for each pay period for which the employee was underpaid.

b. For civil penalties pursuant to Labor Code §1197.1, in addition to and entirely independent and apart from other penalties in the Labor Code, as follows:

i. For any initial violation that is intentionally committed, $100 for each aggrieved underpaid employee for each pay period for which the employee was underpaid; and

ii. For each subsequent violation, regardless of whether the initial violation is intentionally committed, $250 for each aggrieved underpaid employee for each pay period for which the employee was underpaid.

b. For civil penalties under Labor Code §210, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation;

c. For civil penalties per Labor Code §226.3, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of $250 for each aggrieved employee per pay period for each violation, and $1,000 for each aggrieved employee per pay period for each subsequent violation;

d. For civil penalties per Labor Code §256, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

e. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §§2699(g)(1) and any other applicable statute; and

f. For such relief as this Court may deem just and proper, including reasonable attorneys' fees and costs incurred.

Dated: November 28. 2018

LAW OFFICES OF
KEVIN T. BARNES8

By: [handwritten: signature]

Kevin T. Barnes, Esq.
Gregg Lander, Esq.
Attorneys for Plaintiffs

Notice of Labor Code Violations Pursuant to Labor Code 2699.3 From Kevin T. Barnes to PAGA Administrator re: Viking River Cruises, Inc. (Oct. 12, 2017)

* * *

Re: Viking River Cruises, Inc. (hereafter, the "Employer")

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency and the Employer

From: Angie Moriana (the "Employee"), who was subjected to the wage and hour practices set forth below

The Employee, by way of her above counsel, submits this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a)/(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period, the Employer employed the Employee and all others similarly situated as Sales Representatives, including but not limited to Ocean Specialists, Outbound Sales Agents, Inbound Sales Agents, Travel Agent Desk, Inside Sales, Group Sales, Reservation Sales Agents, and Air Department Agents. During this time period, the Employer utilized consistent policies and procedures regarding the Employee and all other similarly situated Sales Representatives, as follows:

First, the Employee and all other similarly situated Sales Representatives were required to be at

their designated work stations before the beginning of their scheduled shift, to have their workstation ready to begin taking calls at the start time of their scheduled shift. Sales Representatives are disciplined if they clock in more than five minutes before the start time of their scheduled shift. However, before Sales Representatives can clock in, they must log on to the Employer's computer systems, open their email application and/or open and load various software (including but not limited to Evolution, Excel, ADP, Avaya, Coldstar and/or Workforce Management), which often takes more than five minutes, requiring Sales Representatives to be under the Employer's control while off the clock. As such, the Employer failed to pay all straight time, minimum wages and overtime wages due for the time the Employee and all other similarly situated Sales Representatives were subject to the Employer's control. As such, the Employer violated Labor Code §§510, 1194 and 1197 and the applicable Industrial Wage Order, and owe penalties pursuant to Labor Code §§2699(f) and/or 558.

Second, the Employer failed to use the correct regular rate when calculating overtime pay for the Employee and all other similarly situated Sales Representatives, who received additional pay from the Employer in categories such as commissions, "Commission Optional Flat Rate and/or other bonuses. However, the Employer did not always consider all additional pay in the computation of the regular rate of pay for the Employee and all other similarly situated Sales Representatives. As such, the Employer owe the Employee and all other similarly situated Sales Representatives unpaid overtime wages, and

penalties pursuant to Labor Code §§2699(f) and/or 558.

Third, The Employer failed to timely provide all requisite meal breaks (including second meal breaks) to the Employee and all other similarly situated Sales Representatives, because the Employee and those similarly situated Sales Representatives did not always get full thirty minute uninterrupted meal breaks within the first five hours of their shift. As such, the Employee and all other similarly situated sometimes worked over five hours but were not timely provided a legally compliant meal break. Further, the Employee and those similarly situated sometimes worked over ten hours but were not provided a legally compliant second meal break. The Employer did not pay a meal period penalty for any of these violations. As such, the Employer violated Labor Code §§226.7, 512 and 516 and the applicable Industrial Wage Order, ¶11, and owes penalties pursuant to Labor Code §§2699(f) and/or 558.

Fourth, the Employer failed to provide the Employee and all other similarly situated Sales Representatives with paid rest breaks, as the Employee and all other similarly situated Sales Representatives did not always get full ten minute uninterrupted rest breaks within the first four hours of their shift or major fraction thereof, and each subsequent four hours worked thereafter or major fraction thereof. The Employer did not pay a rest period penalty for any of these violations. As such, the Employer violated Labor Code §226.7 and the applicable Industrial Wage Order, ¶12(A)/(B), and

owes rest period wages and penalties pursuant to Labor Code §§2699(f) and/or 558.

Fifth, as stated, in addition to an hourly wage, the Employer sometimes paid the Employee and all other similarly situated Sales Representatives in the form of a commission on sales. However, in violation of Labor Code §204, the Employers paid these commissions once, rather than twice, per month, and in some cases they were not paid the balance of their commissions for numerous months. These commissions are earned and calculable in every pay period, yet the Employer waits until the end of each month before calculating earned commissions for the Employee and all others similarly situated. As such, the Employer violated Labor Code §204, and owe penalties pursuant to Labor Code §§2699(a)/(f).

Sixth, as stated, in addition to an hourly wage, the Employer sometimes paid the Employee and all other similarly situated Sales Representatives in the form of a commission on sales. However, the Employer did not utilize a written contract setting forth the method by which the Employer's commissions would be computed, and did not give a signed copy to the Employee and all other similarly situated Sales Representatives. As such, the Employer violated Labor Code §2751, which provides that whenever an employer enters into a contract of employment with an employee for services to be rendered within California and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid. Further, the Employer must give a signed copy of this contract to

every employee who is a party thereto and must obtain a signed receipt for the contract from each employee. This did not occur here, and as such, the Employer owes penalties pursuant to Labor Code §§2699(a)/(f).

Seventh, regarding wage statements, pursuant to Labor Code §226 and the applicable Industrial Wage Order, the Employer is required to include on a paystub such information as all hours worked, the correct hourly rate of pay, and the correct rate of pay for overtime and double time work. Here, because of the Employer's illegal wage and hour policies as set forth above, the correct hourly rate for all wages earned were not reflected on the wage statements provided by the Employer to the Employee and all other similarly situated Sales Representatives, and the Employer issued improper wage statements. As such, the Employer derivatively violated Labor Code §226, and owe penalties pursuant to Labor Code §§2699(f).

Eighth, regarding waiting time penalties, pursuant to Labor Code §203, the Employee and all other similarly situated Sales Representatives are entitled to thirty day of wages at their regular rate of pay for the Employer's failure to pay all wages due upon separation of employment. Here, because of the Employer's illegal wage and hour policies as set forth above, the Employer derivatively violated Labor Code §203, and owes penalties pursuant to Labor Code §§2699(f) and/or 256.

Ninth, and finally, also regarding waiting time penalties, and in addition to the derivative violations of Labor Code §203 above, the Employer did not timely pay the Employee and other similarly situated

separated Sales Representatives all wages due and owing in a timely manner. For example, the Employee was terminated on June 2, 2017, so her final wages were immediately due and owing. However, the Employee was not sent final wages until June 5, 2017. Even then, the Employee did not receive her final commission wages until July 10, 2017. Therefore, as an independent violation of Labor Code §§201-203, the Employer owes the Employee and all other similarly situated Sales Representatives who did not timely receive their final wages for up to thirty day of wages at their regular rate of pay, and owes penalties pursuant to Labor Code §§2699(f).

Pursuant to Labor Code §2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations. Further, pursuant to Labor Code §2699.3(c)(2)(A), the Employer may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699.

Thank you for your consideration.

Very Truly Yours,

[handwritten: signature]
Kevin T. Barnes
Gregg Lander

* * *

Answer to Second Amended Complaint,
***Moriana v. Viking River Cruises, Inc.*,**
No. BC687325 (Cal. Super. Ct. Jan. 2, 2019)

Defendant Viking River Cruises, Inc. ("Viking" or "Defendant"), by and through its attorneys, on behalf of itself and no other Defendant, hereby Answers the unverified Second Amended Complaint ("Complaint") filed by Plaintiff Angie Moriana ("Plaintiff") as follows:

GENERAL DENIAL

Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendant generally and specifically denies each and every allegation in the Complaint. In addition, Defendant denies that Plaintiff has sustained, or will sustain, any loss or damage in the manner or amount alleged, or otherwise, by reason of any act or omission of, or any other conduct or absence thereof on the part of, Defendant.

DEFENSES

Without admitting any of the allegations of the Complaint and without admitting or acknowledging that Defendant bears any burden of proof as to any of them, Defendant asserts the following defenses. Defendant intends to rely upon any additional defenses that become available or apparent during pretrial proceedings and discovery in this action and hereby reserves the right to amend this Answer to assert all such further defenses.

FIRST DEFENSE

(Failure to State a Claim)

1. Defendant is informed and believes and hereby alleges that the Complaint and each cause of action set forth therein, or some of them, fail to state facts sufficient to constitute a cause of action against Defendant.

SECOND DEFENSE

(Unclean Hands)

2. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal and, on that basis alleges, that Plaintiff's Complaint and each cause of action alleged therein, or some of them, are barred, in whole or in part, by the doctrine of unclean hands.

THIRD DEFENSE

(Waiver)

3. Defendant alleges, that Plaintiff's Complaint, and each cause of action alleged therein, or some of them, are barred, in whole or in part, by the doctrine of waiver.

FOURTH DEFENSE

(Estoppel)

4. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal and, on that basis alleges, that Plaintiff's Complaint and each cause of action alleged therein, or some of them, are barred, in whole or in part, by the doctrine of estoppel.

FIFTH DEFENSE

(Laches)

5. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal and, on that basis alleges, that Plaintiff's Complaint and each cause of action alleged therein, or some of them, are barred, in whole or in part, by the doctrine of laches.

SIXTH DEFENSE

(Consent)

6. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal and, on that basis alleges, that Plaintiff's Complaint and each cause of action alleged therein, or some of them, are barred, in whole or in part, by the doctrine of consent.

SEVENTH DEFENSE

(*Res Judicata*)

7. Defendant alleges, that Plaintiff's Complaint and each cause of action alleged therein are barred, in whole or in part, by the doctrine of *res judicata*.

EIGHTH DEFENSE

(Collateral Estoppel)

8. Defendant alleges that Plaintiff's Complaint and each cause of action alleged therein, or some of them, are barred by the doctrine of collateral estoppel insofar as Plaintiff and/or other allegedly aggrieved employees Plaintiff purports to represent settled and released such claims, or have or will litigate issues raised by the Complaint prior to adjudication of those issues in the instant action.

NINTH DEFENSE

(Release)

9. Defendant alleges that Plaintiff's Complaint and each cause of action set forth therein, or some of them, are barred to the extent that Plaintiff and/or other allegedly aggrieved employees Plaintiff purports to represent have released Defendant from liability as alleged in the Complaint.

TENTH DEFENSE

(Failure to Exhaust Administrative Remedies)

10. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal and, on that basis alleges, that Plaintiff's Complaint and each cause of action alleged therein, or some of them, are barred, in whole or in part, insofar as Plaintiff and/or other allegedly aggrieved employees Plaintiff purports to represent failed to timely and adequately exhaust available administrative remedies under the California Labor Code and the Private Attorney General Act.

ELEVENTH DEFENSE

(Failure to Provide LWDA Adequate Notice)

11. Defendant alleges that Plaintiff's Complaint and each cause of action alleged therein, or some of them, are barred, in whole or in part, insofar as Plaintiff failed to provide the Labor & Workforce Development Agency ("LWDA") proper notification of the claims and/or the names of the "aggrieved employees" on whose behalf she intends to seek penalties, pursuant to the Private Attorneys General Act, Labor Code sections 2698 *et seq*. ("PAGA").

TWELFTH DEFENSE

(Arbitration and Internal Complaint Procedures)

12. Defendant alleges that Plaintiff's Complaint and each cause of action alleged therein, or some of them, are barred, in whole or in part, because there exists one or more arbitration agreements between Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent, on the one hand, and Defendant, on the other hand, in which the parties agreed to submit any and all claims arising under the arbitration agreements to final and binding arbitration on an individual basis (and waived the right to bring claims on a class action basis) and thus each and every cause of action alleged in the Complaint is subject to final and binding arbitration in accordance with the terms of the arbitration agreements and such claims are further barred due to the failure or refusal of Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent to timely and completely utilize the complaint procedure established by Defendant, including but not limited to the applicable arbitration procedures, which was at all times available and applicable to Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent. Defendant does not waive its right to enforce the arbitration agreements of other alleged aggrieved employees.

THIRTEENTH DEFENSE

(Federal Arbitration Act Preemption)

13. Defendant alleges that the Federal Arbitration Act ("FAA") applies to the Complaint, and to each cause of action set forth therein, because

Plaintiff entered into a written arbitration agreement evidencing a transaction involving commerce and therefore the FAA applies and preempts conflicting state law and requires that Plaintiff's claims be submitted to binding arbitration. *See* 9 U.S.C. § 2; *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Preston v. Ferrer*, 552 U.S. 346, 353 (2008) ("[t]he FAA's displacement of conflicting state law is now well-established, and has been repeatedly reaffirmed") (citations and quotations omitted).

FOURTEENTH DEFENSE

(Lack of Standing)

14. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal and, on that basis alleges, that the Complaint, and each cause of action set forth therein, or some of them, are barred because Plaintiff lacks standing as a representative of the allegedly aggrieved employees Plaintiff purports to represent because she is not an "aggrieved employee" pursuant to PAGA.

FIFTEENTH DEFENSE

(Satisfaction of Claims)

15. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal and on that basis alleges that any monies owed to Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent have been paid in full and any obligations Defendant may have owed to Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent have been paid or otherwise satisfied.

SIXTEENTH DEFENSE

(Failure to Take Meal Periods and Rest Breaks Provided or Allowed Under the Law)

16. Defendant alleges that assuming *arguendo* that Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent did not take required meal periods and/or rest breaks, Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent are not entitled to a premium payment under California Labor Code Section 226.7 and the applicable Wage Order of the Industrial Welfare Commission because they (1) voluntarily failed to take meal periods and/or rest breaks that were provided or allowed in compliance with California law, (2) voluntarily waived and/or relinquished their right to meal periods and/or rest breaks as provided or allowed under California Labor Code Section 512(a) and/or the applicable Wage Order of the Industrial Welfare Commission, and/or (3) Defendant did not engage in any act or omission to prevent or prohibit Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent from taking meal periods and rest breaks that were provided or allowed in accordance with applicable law and Company policy.

SEVENTEENTH DEFENSE

(Labor Code Section 226 – No Injury)

17. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that the Complaint and each cause of action therein, or some of them, are barred because Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to

represent have not suffered any injury from any alleged failure by Defendant to comply with California Labor Code Section 226.

EIGHTEENTH DEFENSE

(Labor Code Section 226 – Not a "Knowing and Intentional Failure")

18. Defendant alleges that, even assuming *arguendo*, that Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent were not provided with proper itemized statements of wages and deductions, which Defendant denies, Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent are not entitled to recover damages because Defendant's alleged failure to comply with California Labor Code Section 226 was not a "knowing and intentional failure" under California Labor Code Section 226(a).

NINETEENTH DEFENSE

(Timely Wage Payments)

19. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that the Complaint and each cause of action therein, or some of them, are barred because (1) there are *bona fide* disputes as to whether Defendant failed to timely pay all wages due, (2) there are *bona fide* disputes as to whether Defendant failed to present wage statements on a timely basis, and (3) Defendant has not willfully failed to pay such compensation, if any is owed.

TWENTIETH DEFENSE

(Statute of Limitations)

20. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that the Complaint, and each cause of action set forth therein, or some of them, are barred by the applicable statutes of limitations, including, but not limited to, those set forth in California Code of Civil Procedure Section 340(a). Plaintiff filed the instant action on December 18, 2017. Accordingly, Plaintiff and other allegedly aggrieved employees are barred from recovering alleged penalties prior to December 18, 2016.

TWENTY-FIRST DEFENSE

(*Bona Fide* Dispute)

21. Defendant alleges that the Complaint and each cause of action therein, or some of them, fails to state a claim for penalties under the California Labor Code in that there was a *bona fide*, good faith dispute as to Defendant's obligations under any applicable Labor Code provisions.

TWENTY-SECOND DEFENSE

(Good Faith)

22. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal and on that basis alleges, that any violation of the Labor Code or a Wage Order of the Industrial Welfare Commission was an act or omission made in good faith and was not intentional or willful, and Defendant had reasonable grounds for believing that its wage payment practices complied with

applicable laws and that any act or omission was not a violation of the Labor Code or the applicable Wage Order of the Industrial Welfare Commission.

TWENTY-THIRD DEFENSE

(Purported Violations *De Minimis*)

23. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that the Complaint and each cause of action therein, or some of them, are barred in whole or in part because even assuming, *arguendo*, that Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent may be able to prove the existence of alleged violations of the California Labor Code and/or the applicable Wage Order of the Industrial Welfare Commission, such alleged violations, if any, are *de minimis*, and therefore Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent are not entitled to any additional compensation.

TWENTY-FOURTH DEFENSE

(Avoidable Consequences)

24. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that the Complaint and each cause of action therein, or some of them, are barred in whole or in part by the doctrine of avoidable consequences. *See Dep't of Health Servs. v. Super. Ct.*, 31 Cal. 4th 1026 (2003).

TWENTY-FIFTH DEFENSE

(Entitlement to Credit or Setoff)

25. Defendant alleges that, assuming Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent are entitled to any unpaid wages, Defendant is entitled to a credit or setoff. This credit or setoff includes, but is not limited to, amounts erroneously overpaid to Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent. The claims of Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent are barred because Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent would be unjustly enriched if they prevailed on any of said claims.

TWENTY-SIXTH DEFENSE

(Breach of Duty)

26. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that the Complaint, and each cause of action set forth therein, or some of them, is barred by Plaintiff's own breach of duties owed to Defendant under California Labor Code Sections 2853, 2854, 2856, 2857, 2858 and/or 2859.

TWENTY-SEVENTH DEFENSE

(Failure To Mitigate)

27. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, without admitting any facts pled by Plaintiff, that if Plaintiff and/or other allegedly aggrieved employees

Plaintiff purports to represent have sustained any loss, injury, or damages either as alleged in the Complaint or at all, which Defendant expressly denies, the same were directly and proximately caused or exacerbated by Plaintiff's and/or other allegedly aggrieved employees' own conduct, promises, and representations to Defendant, and failure to take actions to mitigate these losses, injuries, or damages.

TWENTY-EIGHTH DEFENSE

(Excessive Fines)

28. Defendant alleges that, as applies to this action, employment of civil penalties would result in the imposition of excessive fines in violation of Article I, Section 17 of the California Constitution and the eighth amendment of the United States Constitution. *See People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005).

TWENTY-NINTH DEFENSE

(Unconstitutionality of Multiple Penalties)

29. Defendant alleges that multiple individual penalties would deprive Defendant of its fundamental constitutional rights to due process.

THIRTIETH DEFENSE

(Arbitrary and Capricious Fines)

30. Defendant alleges that the claims for civil penalties of Plaintiff and/or allegedly aggrieved employees Plaintiff purports to represent under the PAGA would result in an award that is unjust, arbitrary and oppressive, or confiscatory within the meaning of California Labor Code section 2699(e)(2), and the Court should exercise its discretionary powers

to reduce the maximum civil penalties available, if any such penalties are awarded.

THIRTY-FIRST DEFENSE

(Claims Unconstitutionally Vague and Ambiguous)

31. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that the Complaint, and each cause of action set forth therein, or some of them, is barred because the applicable Wage Orders of the Industrial Welfare Commission and California Labor Code Section 2698, *et seq,*, 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.

THIRTY-SECOND DEFENSE

(Penalties Violate Substantive and Procedural Due Process)

32. Defendant alleges that, as applies to this action, employment of civil penalties would violate Defendant's procedural and substantive and procedural due process rights (vis-à-vis the Fourteenth Amendment of the United States Constitution and the Due Process and Equal Protection Clauses in Article 1 of the California Constitution). *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005).

THIRTY-THIRD DEFENSE

(No Knowledge of Work)

33. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that the Complaint and each cause of action therein, or some of them, are barred in whole or in part because if Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent "worked" hours for which compensation was not paid, Defendant had no knowledge, or reason to know, of such "work" and such overtime "work" was undertaken without the direction, consent or permission of Defendant.

THIRTY-FOURTH DEFENSE

(Failure to State a Claim for Attorneys' Fees and Costs)

34. Defendant alleges that the Complaint fails to state facts sufficient to constitute a cause of action for which attorneys' fees and costs may be awarded.

THIRTY-FIFTH DEFENSE

(Prejudgment Interest)

35. Defendant alleges that the Complaint fails to properly state a claim upon which prejudgment interest may be awarded, as the damages claimed are not sufficiently certain to allow an award of prejudgment interest.

THIRTY-SIXTH DEFENSE

(Unjust Enrichment)

36. Defendant alleges that the Complaint, and each cause of action set forth therein, or some of them, are barred because Plaintiff and/or the allegedly

aggrieved employees Plaintiff purports to represent did not incur any damages or losses, and any award of such alleged damages and/or losses would unjustly enrich them.

THIRTY-SEVENTH DEFENSE

(Initial Violation)

37. Defendant alleges that, insofar as Defendant has never been cited by the Labor Commissioner, or received an adverse judgment against it in a court of law, with respect to any of Plaintiff's Labor Code claims, any civil penalties awarded to Plaintiff under PAGA must be limited to those penalties applicable to an initial violation.

THIRTY-EIGHTH DEFENSE

(No PAGA Representative Action)

38. Defendant alleges that the claims of Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent are such that they cannot be tried on a representative basis because (1) such a determination requires complex factual issues, (2) penalties could not be calculated on a representative basis, (3) the penalties would not be identical for all aggrieved employees, and (4) trying such a representative action would be unmanageable.

THIRTY-NINTH DEFENSE

(No Right to Jury Trial under PAGA)

39. Defendant alleges that Plaintiff does not have a right to a jury trial because a PAGA claim is an action solely seeking PAGA penalties which sounds in equity and thus may only be tried to a court.

FORTIETH DEFENSE

(Unconstitutionally Violative of Separation of Powers)

40. Defendant alleges that Plaintiff's claim for penalties based upon the PAGA is unconstitutional on the basis that it violates the separation of powers doctrine by empowering private attorneys to prosecute public claims, thereby impairing the judiciary's inherent power to regulate attorney conduct.

RESERVATION OF RIGHT TO AMEND TO ADD ADDITIONAL DEFENSES

41. Defendant does not presently know all of the facts respecting the conduct of Plaintiff and/or the allegedly aggrieved employees Plaintiff purports to represent to allow it to state all defenses at this time. Defendant is informed and believes, however, that further investigation and discovery will reveal that it may have additional defenses available of which it is not fully aware at the present time. Defendant reserves the right to amend this Answer to assert said additional defenses should it later discover facts demonstrating the existence and applicability of same.

PRAYER FOR RELIEF

WHEREFORE, Defendant VIKING RIVER CRUISES, INC. prays for relief as follows:

1. That Plaintiff take nothing and that the Complaint is dismissed in its entirety with prejudice;

2. That judgment is entered in Defendant's favor;

3. That Defendant is awarded its reasonable attorneys' fees and costs of suit here (pursuant to, among others, California Labor Code section 218.5); and

4. That Defendant is awarded such other and further relief as the Court deems just and proper.

Dated: January 2, 2019

[handwritten: signature]
DOUGLAS A. WICKHAM
IAN T. MAHER
LITTLER MENDELSON, P.C.
Attorneys for Defendant
VIKING RIVER CRUISES, INC.

Motion to Compel Arbitration, *Moriana v. Viking River Cruises, Inc.*, No. BC687325 (Cal. Super. Ct. Jan. 8, 2019)

TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on January 31, 2019 at 8:30 a.m., or as soon thereafter as this matter may be heard in Department 37 of the above-entitled Court, located at 111 North Hill Street, Los Angeles, California 90012, Defendant Viking River Cruises, Inc. ("Viking") will, and hereby does, move to compel arbitration of Plaintiff Angie Moriana's ("Plaintiff") single cause of action under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.* ("PAGA") on an individual basis, dismiss her representative PAGA claim, and stay all proceedings pursuant to the Federal Arbitration Act pending completion of arbitration of Plaintiff's individual claim.

This Motion is brought on the grounds that Plaintiff's PAGA claim is subject to a valid and enforceable arbitration agreement that requires Plaintiff to litigate this claim in arbitration on an individual basis, not in a court of law. Viking respectfully requests that this Court issue an Order: (1) compelling Plaintiff to submit her PAGA claim to binding arbitration on an individual basis in accordance with the arbitration agreement Plaintiff electronically agreed to; (2) dismissing Plaintiff's representative claim; and (3) staying this action pursuant to 9 U.S.C. section 3 pending completion of arbitration of Plaintiff's individual claim.

This motion to compel arbitration and to stay proceedings will be and hereby is made and based

upon this Notice of Motion and Motion, Viking's Memorandum of Points and Authorities, the Declaration of Grant Folsom (which was previously filed in support of Viking's initial Motion to Compel Arbitration on March 23, 2018 and re-filed here), the Declaration of Milton G. Hugh (which was previously filed in support of Viking's initial Motion to Compel Arbitration on March 23, 2018 and re-filed here), Viking's Request for Judicial Notice, and all of the pleadings and records on file in this matter, and on such further arguments as may be heard by this Court.

Dated: January 8, 2019

[handwritten: signature]
DOUGLAS A. WICKHAM
IAN T. MAHER
LITTLER MENDELSON, P.C.
Attorneys for Defendant
VIKING RIVER CRUISES, INC.

Declaration of Grant Folsom in Support of Motion to Compel Arbitration, *Moriana v. Viking River Cruises, Inc.*, No. BC687325 (Cal. Super. Ct. Jan. 8, 2019)

I, Grant Folsom, declare and state as follows:

1. I am over the age of eighteen and am otherwise competent to testify to the facts set forth in this Declaration. All statements contained in this Declaration are true and correct and are based on my personal knowledge, except such facts that are made upon information and belief.

2. I am the Vice President Technology Operations for TriNet HR III, Inc. (formerly TriNet HR Corporation) ("TriNet"). Specifically, in my position, I oversee vulnerability management, data loss prevention, logical access, compliance, endpoint protection and the security of all communication channels for TriNet. Additionally, I handle the application of security assessments across all of TriNet's portals, and ensure the development and implementation of secure information technology practices for TriNet generally, but also specifically for its online portal.

3. TriNet is a licensed Professional Employer Organization ("PEO"). PEOs fulfill general administrative needs for their clients, including payroll processing and providing access to certain personnel information, documents, and notices for their client's worksite employees.

4. TriNet maintains a password-protected online portal that provides access to certain employment policies, employee records and forms

(including payroll records, PTO availability, and time off requests), and information, including TriNet's employee handbook. Both TriNet employees as well as the employees of TriNet clients are provided access to the online portal.

5. In my position, I am familiar with the online tools that TriNet makes available to its clients' worksite employees. Specifically, I am currently involved in the maintenance of the online portal and the online process by which individuals are provided with TriNet's Terms and Conditions Agreement ("TCA") and Dispute Resolution Protocol ("DRP") and allowed to review and acknowledge the TCA and DRP, and the process by which individuals agree to abide by both. Finally, in my position, I have access to TriNet's online portal and the information contained in it, and can request the user audit log for each individual who creates their own personal password-protected account. The audit logs create an account of each action completed by each unique user, including information regarding the time of access, the individual's user name and personal identification, and the Internet Protocol ("IP") address where he or she accessed the online portal.

6. Viking River Cruises, Inc. ("Viking") is a customer of TriNet. In TriNet's documents, including the TCA and DRP, Viking is referred to as a "client" or "customer" of TriNet and also as the "worksite employer." Because it is the on-site employer, Viking retains the responsibilities of hiring and directing the day-to-day work of its worksite employees, such as Angie Moriana ("Ms. Moriana").

7. Newly hired worksite employees of TriNet's customers, such as Viking, access the online portal as part of TriNet's onboarding process (for new employees), or once TriNet and a client establish a relationship and TriNet assumes responsibility for providing document access (for existing employees). Worksite employees are also prompted to accept revised TCAs during their employment as TriNet implements them. Employees of TriNet customers are referred to as "worksite employees." Worksite employees who are provided access to the TriNet online portal and who receive payroll processed by TriNet retain their status as worksite employees of the client company while TriNet acts as the PEO. I am informed and believe all applicants and employees of Viking are informed at the commencement of their employment of the existence of the PEO relationship and TriNet's status as the PEO.

8. TriNet's online portal is a password-protected online environment. When worksite employees first access the online portal, they encounter a log on screen. At this screen, they must enter both a Username and a Password. Otherwise they cannot proceed. Worksite employees are notified by a "Welcome" email of their default password for logging in. I am informed and believe that in all of 2014 to 2016, the worksite employees used the default password upon first login to accept the TCA and then once the worksite employees logged in and accepted the TCA, TriNet worksite employees then generated their unique password as part of TriNet's onboarding process. Thereafter, they can use the same Password that they created, along with their Username, to subsequently log on to their online portal account.

This password security protocol functions like many familiar password-protected sites on the Internet.

9. Once a worksite employee creates his or her own unique password, nothing in TriNet's system shares that password with anyone. The password cannot be manually retrieved from the system by anyone. TriNet designed and developed the system and internal security protocols to ensure each user's individual password security. Only the worksite employee user will know his/her password once created by the worksite employee. If a worksite employee forgets his/her password, TriNet has no way to retrieve it. In most cases, the only thing TriNet can do is manually "re-set" that user's online portal account to allow him/her to create a new password, as if he/she were a new user. Worksite employers, such as Viking, do not have access to change the login password for any of their worksite employees. Furthermore, TriNet's security protocols do not permit anyone other than a user with the correct password to enter a worksite employee's individual online portal account. TriNet has the ability to "view" select screens of a worksite employee's online portal account, but we have no ability to directly access that account, or to perform any functions within that online portal account as that user.

10. I am informed and believe that in approximately January 2013, TriNet implemented its TCA, including the DRP. I am informed and believe that at that time, worksite employees of TriNet's customers received an email informing them that they would need to review the TCA prior to accessing the online portal. I am informed and believe the first time

a worksite employee logged into his/her online portal account after January 2013, using their initial default password or their generated password, the worksite employee was presented with an electronic version of the TCA as the very first screen they saw after login. The worksite employee was asked to carefully read TriNet's TCA, which contains the DRP, and there is no limitation on the time to do so. I am informed and believe that after being provided the opportunity to read the policies, including the DRP, each worksite employee was asked to acknowledge that he/she has "read and underst[ood] the contents of" the TCA and DRP and "agree[s] to abide by the terms and conditions" contained in the TCA and DRP.

11. I have reviewed the data regarding the online portal system, including the data related to the individual online portal account created for Ms. Moriana. Based on my review, the data suggests that the then effective TCA and DRP was presented to Ms. Moriana via her individual online portal account on June 2, 2016. A true and correct copy of the TCA referred to immediately above, which contains the DRP presented to Ms. Moriana via her individual online account in June 2016, is attached hereto as **Exhibit A**. This is the same TCA that was presented to Ms. Moriana via her individual online account for review and acceptance on or about June 2, 2016, in Eastern Daylight Time.

12. Once an individual is presented with the DRP through their online portal account, there is no limit on the amount of time an individual may take to review and either reject or accept the TCA, which contains the DRP. As such, because the DRP was

presented to Ms. Moriana through her online portal account, there was no specific time limit for her to review and accept the DRP. If Ms. Moriana did not have enough time to read the TCA when she first logged into her online portal account, she could simply log in at another time and review it at a later date.

13. To agree to and accept the terms of the DRP, Ms. Moriana was required to ensure a valid email address at the bottom of the screen and then click on a button marked "I Accept." Notably, this email address can only be verified by the individual accessing her online portal account using her username and password. Viking and TriNet do not have the ability to change or alter the email address to be used on behalf of the individual for the purpose of receiving confirmation. The TriNet portal in 2016 was designed to use the email address verified by the employee to provide confirmation of acceptance or rejection. Finally, next to the "I Accept" button was a button entitled "Reject."

14. When an individual clicks the "I Accept" button after being presented with the TCA/DRP for review, the column entitled "Accepted" in that individual's online portal account is marked with a "Y." If the individual has not clicked the accept button or clicks the "Reject" button, the column entitled "Accepted" in their online portal account screenshot is marked with a "N." Notably, Viking does not have access to change the login password for any of their worksite employees. TriNet security policy prohibits this as well. On information and belief, the information in this paragraph accurately describes the process and protocol in place since January 2013 when

TriNet first implemented its DRP, and on June 2, 2016 when the data suggests Ms. Moriana accepted the DRP.

15. I have reviewed Ms. Moriana's online portal account regarding her review and acceptance of the TCA/DRP. Attached as **Exhibit B** is a true and correct copy of a screenshot of Ms. Moriana's online portal account when data suggests she accepted the TCA and DRP on June 2, 2016. The "Y" in the "Accepted" column (shown on **Exhibit B**) in her online portal account demonstrates that on June 2, 2016, data suggests Ms. Moriana accepted the then-effective TCA, including the DRP, by electronic acceptance through her online portal account using her username and password. A confirmation was sent to Ms. Moriana on June 2, 2016 at the email address she submitted on her online portal account which is angie.moriana@vikingcruises.com. The online portal account only includes a "Y" in the "Accepted" column once an employee has logged into his/her online portal account using his/her username and password, submitted a valid e-mail address, and the employee then clicks on the "I Accept" button at the bottom of the screen containing the TCA and DRP. In 2016, it is only possible for an employee to access his or her online portal account and accept the TCA/DRP after the employee has entered his or her username and password. Ms. Moriana was required to use her username and password in order to log into the TriNet online portal account and accept the TCA/DRP by electronic means of acceptance. Upon information and belief, therefore, the data suggests that Ms. Moriana logged into her TriNet Passport account, using the

username and password, and accepted the TCA/DRP on June 2, 2016.

16. Based on the information detailed above, I have personally verified data which suggests that Ms. Moriana electronically acknowledged and accepted the DRP on June 2, 2016. *See* **Exhibit B**. The screenshot is an accurate display of the information from the online portal system for Ms. Moriana's account related to her acceptance of the TCA and the DRP. It shows Ms. Moriana's employee identification number which is 00001824692, her name, the e-mail address submitted by Ms. Moriana which is: angie.moriana@vikingcruises.com, Viking's company identification number with TriNet which is 7A9, the date and time when the data suggests Ms. Moriana (06/02/2016 5:24:06 pm Eastern Daylight Time) clicked the "I Accept" button to accept the then effective TCA and DRP (labeled "EFFDT" which means effective date), and "Y" in the "accepted" column.

17. When a worksite employee accepts the TCA/DRP through his or her secure online portal account, TriNet's system is designed to automatically generate an e-mail to that worksite employee ("Acceptance E-Mail"). The Acceptance E-Mail "confirm[s] … acceptance of TriNet's Terms & Conditions Agreement" (which includes the DRP), and also attaches an electronic PDF copy of the TCA, including the DRP. A true and correct copy of the Acceptance E-Mail sent to Ms. Moriana at the email address she submitted on June 2, 2016, is attached hereto as **Exhibit C**.

18. Based on my personal knowledge of the design and operation of TriNet's online portal system, the contents of **Exhibits B** and **C** suggest that Ms. Moriana ensured a valid e-mail address at the bottom of the screen containing the TCA and DRP in the online portal account and then clicked the "I Accept" button on June 2, 2016, agreeing to abide by the terms and conditions of the TCA and the DRP. The version effective on June 2, 2016 is attached as **Exhibit A**. By doing so, Ms. Moriana agreed to submit her claims to arbitration in lieu of pursuing them in court.

19. Review of the copy of the then effective TCA and DRP that was sent in the Acceptance Email to Ms. Moriana (attached hereto as **Exhibit C)** demonstrates that she did not opt out of the Class Action Waiver contained in the TCA. Section 9.d. of the TCA includes the Class Action Waiver and provides worksite employees with an option to opt out of the Class Action Waiver by clicking on a box in section 9.d. before clicking the "I Accept" button at the bottom of the TCA. The box in section 9.d. of the TCA acknowledged and accepted by Ms. Moriana in **Exhibit C** is not marked to indicate that Ms. Moriana opted out of the Class Action Waiver. If Ms. Moriana had opted out of the Class Action Waiver, then there would be a mark in the box in section 9.d. of the TCA that was sent to her in the Acceptance Email attached as **Exhibit C**.

20. I obtained copies of all these documents from electronic records maintained by TriNet in Austin, Texas and Bradenton, Florida. These electronic records are generated at the same time the action corresponding to the records takes place. For example, the electronic record of the unique user log that is

Exhibit B was generated at the time Ms. Moriana accepted the DRP on June 2, 2016. The confirmation email that was sent to Ms. Moriana upon her acceptance of the DRP was also generated at the time Ms. Moriana accepted the DRP on June 2, 2016.

21. These documents are kept by TriNet in the ordinary course of its regularly conducted business activity.

22. TriNet has business offices in multiple states throughout the United States, including California, Florida, New York, and Texas. TriNet's clients are located throughout the United States, and worksite employees, such as Ms. Moriana, access the TriNet system from various states.

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

Executed this 21st day of March 2018, at Bradenton, Florida.

[handwritten: signature]
GRANT FOLSOM

Exhibit A - TriNet Terms and Conditions Agreement

PLEASE READ THIS TCA CAREFULLY. IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR USE OF TRINET'S SECURED ONLINE PLATFORM AND ONLINE SERVICES, YOUR RELATIONSHIP WITH TRINET, THE HANDLING OF ANY DISPUTES ARISING OUT OF YOUR RELATIONSHIP WITH TRINET OR A TRINET CUSTOMER, AND RELATED MATTERS.

* * *

1. Co-Employment vs. Standard Employment

The TriNet family of companies is engaged in the business of providing human resources services through various licensed professional employer organizations ("PEOs"). In this TCA, "TriNet" includes any and all of the TriNet companies (i.e., TriNet Group, Inc., all companies owned by TriNet Group, Inc. [e.g., TriNet HR Corporation], subsidiaries of companies owned by TriNet Group, Inc., subsidiaries of those subsidiaries, and all other companies under the TriNet Group, Inc. umbrella), whether doing business in their own name or otherwise.

If your relationship with TriNet is beginning because the company you work for ("your worksite employer," or "your company") is a TriNet customer, this means that your company has entered into an agreement with TriNet to share certain employer responsibilities as co-employers. This means TriNet will be your employer of record for administrative purposes and will process payroll based on the information provided by your worksite employer,

sponsor and administer benefits, and provide certain human resources services. As your worksite employer, your company retains the responsibilities of directing your day-to-day work and managing its business affairs. Your worksite employer, not TriNet, has sole responsibility for controlling, or proving input about, your wages, hours, and working conditions.

If you were hired directly by TriNet as a TriNet corporate colleague, TriNet will be your employer for all purposes under this TCA.

2. Privacy, Accuracy, Use, and Exchange of Information

The personal information you provide online through the TriNet online platform is used to facilitate your online HR transactions and to enable TriNet to act, if you work at one of TriNet's customers, as your employer of record for administrative purposes and to provide the HR-related services your company has engaged TriNet to provide. If you work as a TriNet corporate colleague the personal information you provide through the TriNet online platform is used to facilitate your online HR transactions and to enable TriNet to act as your all-purpose employer. You agree not to share with or disclose to anyone else your TriNet Employee ID or password for the TriNet online platform. TriNet, in turn, agrees to use your information only as stated above, which may include sharing the information between platforms owned or licensed by the TriNet family of companies. TriNet will not provide your individually identifiable information to third-party providers or other commercial parties for commercial use except as permitted by you or as required by law.

You agree that all information submitted by you to TriNet is and will be true and correct, and you understand that any misrepresentation may affect both your relationship with TriNet, employment status with your worksite employer, as well as certain insurance or benefits provided to you. You authorize TriNet to enroll you in TriNet sponsored employee benefits, if you are an eligible employee under the terms of the plans, and to make changes to your benefits, payroll and personal information according to the information you submit to TriNet directly or indirectly. Moreover, you agree to provide to TriNet a functioning email address for you, and to review and accept notices and forms sent to that email address as well as to review and accept notices and forms posted on the TriNet online platform. You agree that you will be bound by all communications and notices sent to you at the email address provided by you or on your behalf.

With respect to IRS Form W-2, COBRA notices, and any other notice or form for which consent to electronic delivery is required by law, you hereby agree and consent to electronic delivery by email or via such other method as permitted by law. Further, you agree to make such documents available to your spouse, domestic partner, and/or dependents, as applicable. Such documents will also be posted and made available on the TriNet online platform. If you desire a paper copy of such documents, please contact the TriNet Solution Center at 800.638.0461. Additional contact information is posted online on the TriNet online platform.

If you do not wish to receive such documents by electronic delivery, or if you withdraw your consent to electronic delivery, you will receive your Form W-2, COBRA notice, or other such mandatory documents in hard copy form at no charge.

3. TriNet Payroll Services

If you work for one of TriNet's customers, you understand and agree that:

(a) Responsibility for compliance with accurate reporting of hours worked, legally required break periods, overtime, certain time off accrued and taken, and related matters are the responsibility of your company, over which TriNet has no control;

(b) TriNet is responsible for processing your pay based on your company's reporting (see above), as directed by your company, and pursuant to the written agreement between your company and TriNet;

(c) TriNet does not determine or provide input about your rate of pay, the hours you are scheduled to work or actually work, any legally required break periods, or your exempt/non-exempt status under the law;

(d) TriNet's responsibility for your pay is further limited in the following ways:

(i) If TriNet learns that it paid you an amount not authorized by your company, you agree to repay the amount to TriNet and you consent to TriNet reversing such payment, to the full extent permitted by law;

(ii) If your company fails to fund its payroll, TriNet will pay you the minimum required by law based on the information available to it regarding your hours worked for such a payroll; and

(iii) If you believe that your company owes you more than what TriNet remits to you pursuant to your company's instructions (including payment for time that you have worked, or for commissions and bonuses, time that you have taken or accrued as sick/vacation leave/paid time off, time for any other paid leave of absence or amounts in excess of minimum wage), this will be the sole liability of your worksite employer, and your recourse for collection of such unpaid amounts is against your company and not TriNet.

4. TriNet Benefits

You will be offered certain TriNet employee benefits if such benefits are offered to other similarly situated employees, subject to the terms of the benefits plan document. You acknowledge and agree that if you elect to participate in the TriNet health and welfare plan, you must abide by the rules set forth under the applicable plan document. Unless otherwise required by law, you acknowledge and agree that, if you are eligible to elect TriNet benefits but fail to either submit a benefits election or waive TriNet coverage within the required deadline/timeframe, you will be automatically enrolled in the lowest-cost, employee-only, TriNet PPO medical plan, and corresponding payroll deductions for the medical premiums for this plan will be applied to and deducted from your paycheck. Please refer to the TriNet Benefits Guidebook and Summary Plan Description

(SPD) for important details regarding the consequences of failing to make a timely election or waiver of coverage.

You understand that you have access to an electronic copy of the Guidebook and SPD posted on the TriNet online platform, as well as in PDF format that TriNet can email to you upon request, and as a hardcopy that TriNet can mail to you upon request. You agree to read the Guidebook and SPD carefully as it contains important information regarding TriNet's health and welfare plans.

You understand that, if your company arranges to sponsor a different health plan, you may not be eligible to participate in a health plan sponsored by TriNet. In such case, you also understand and agree that your company may request that TriNet take deductions from your pay for the healthcare premiums associated with your participation in the health plan sponsored by your company. You hereby consent to such deductions, and you understand and agree that they will appear on your pay stub as a deduction amount and will be reported accordingly on your Form W-2.

Finally, you understand and agree that certain information about your TriNet benefits enrollment, including but not limited to plan elections and the amounts of your salary deductions (including, if applicable, salary deferrals for a retirement plan, contributions to a health care flexible spending account, dependent day care flexible spending account, and similar arrangements), may be shared with your worksite employer, for the purpose of verifying billing accuracy and/or for any other lawful

purpose if and when your worksite employer ceases to do business with TriNet.

5. TriNet's Employee Handbook

Here you will find a copy of TriNet's Employee Handbook. Any additional policies applicable to your employment are found on the TriNet online platform. Please review these documents as soon as possible, as it is your responsibility to read and familiarize yourself with the Handbook and any additional policies. Hard copies of the Employee Handbook and any additional policies are available at your place of work, and your hiring manager can email a PDF of them to you.

6. At-Will Relationship

Unless prohibited by law or expressly provided in a written agreement signed by the President of TriNet, your relationship with TriNet is "at-will," meaning that you and TriNet have the right to terminate the relationship at any time, with or without cause, and with or without advance notice.

7. Confirmation of Roles

If you work for a TriNet customer, you understand that the work you perform is for the direct benefit of that company and not TriNet. You understand that your company, and not TriNet, directs and controls your hiring, compensation, employment duties and responsibilities, work schedule and actual hours worked, performance measurement and all other terms and conditions of your employment at the worksite.

If you work for a TriNet customer and you are an officer or partner of that company, you understand

that the agreement between your company and TriNet does not relieve you of any legal responsibility you may have to employees of the company, taxing authorities, or TriNet, should your company fail to meet its payroll obligations.

8. The TriNet Platform, Indemnification And Limits of Liability

Use of the TriNet online platform is licensed to you subject to the terms and conditions in this TCA. You agree that the TriNet online platform constitutes confidential, proprietary, intellectual property of TriNet, that this license is revocable by TriNet at any time, and that you will not modify, reverse engineer, decompile or disassemble, or otherwise tamper with the TriNet online platform or create any derivative works or otherwise incorporate TriNet's online platform in other programs, without TriNet's prior written consent. Any feedback you provide will become TriNet information and TriNet will have the royalty-free right to share the feedback and to create and use derivative works based on the feedback.

If you fail to protect the confidentiality of your password or if you submit inaccurate information to TriNet, you agree to indemnify and hold TriNet, its parents, subsidiaries, affiliates, officers and employees harmless from any claim, demand, penalty, or damage, including reasonable attorneys' fees and costs, asserted by any third party due to or arising out of your use of TriNet's online platform or TriNet's online services. TriNet will notify you within a reasonable period of time of any claim that TriNet seeks indemnification for and will afford you the opportunity to participate in the defense of any such

claim, provided that your participation does not prejudice TriNet's interests, as determined by TriNet at its sole discretion.

Your licensed usage of TriNet's online platform is on an "As Is" basis and TriNet disclaims any and all warranties, express or implied, to the full extent permitted by law. For example, TriNet does not warrant that its online services or content will be uninterrupted or error-free, available at all times or in any and all geographic areas, or will meet any particular criteria of performance or quality. TriNet cannot be held liable for any indirect, punitive, incidental, consequential, or other special damages arising out of your use of TriNet's online platform or TriNet's online services.

9. Dispute Resolution Protocol ("DRP")

a. How The DRP Applies

Subject to the limitations in subsection (b), this DRP covers any dispute arising out of or relating to your employment with TriNet and/or, if you work for one of TriNet's customers, arising out of or relating to your employment with your company, as well as any dispute with a benefit plan, insurer, employee, officer, or director of TriNet or of a TriNet customer (all of whom, in addition to TriNet customers, are intended to be beneficiaries of this DRP)("covered dispute"). The Federal Arbitration Act applies to this DRP. Also, any applicable internal procedures for resolving disputes (e.g., procedures in the Employee Handbook for complaining about, and addressing complaints about, misconduct), as well as the option of mediation, will continue to apply with the goal being to resolve

disputes before they are arbitrated. This DRP will survive termination of the employment relationship.

With only the exceptions described below, arbitration will replace going before a government agency or a court for a judge or jury trial, and even in the exceptional situations described below, NO JURY TRIAL WILL BE PERMITTED, unless applicable law does not allow enforcement of a pre-dispute jury trial waiver in the particular circumstances presented.

b. Limitations On How The DRP Applies

The mandatory arbitration requirement of this DRP does not apply to claims for workers compensation, state disability insurance or unemployment insurance benefits, nor does it apply to claims against a federal contractor if such claims are not subject to pre-dispute mandatory arbitration agreements, nor to claims properly made pursuant to a collective bargaining agreement's dispute resolution procedure if you are represented by a union and the dispute resolution procedure in the collective bargaining agreement conflicts with this DRP. The mandatory arbitration requirement does not prevent a party from bringing complaints, claims or charges before the Equal Employment Opportunity Commission, the U.S. Department of Labor, the National Labor Relations Board, or the Office of Federal Contract Compliance Program, and does not prevent a party from bringing claims in any forum as provided in Public Laws 111-203, 111-118 & 112-10. Further, claims may be brought before any other administrative agency, provided applicable law does

not preclude the right to bring claims there when there is a mandatory arbitration agreement.

If you work for one of TriNet's customers, and there is at the time of a covered dispute an agreement between you and your company governing the resolution of the covered dispute, then to the extent inconsistent with this DRP, that agreement will be controlling as between you and your company (and its employees, officers and agents). The applicability of this DRP to covered disputes between you and TriNet (and its employees, officers and agents) will be unaffected by the existence of an agreement between you and your company regarding dispute resolution.

This DRP does not excuse a requirement that a party exhaust administrative remedies before initiating the DRP to resolve a covered dispute.

c. Starting Arbitration

Before commencement of arbitration, the parties may, upon express written agreement of the parties, submit the dispute to mediation on terms and conditions agreeable to all parties. This DRP does not require mediation before commencing arbitration.

Arbitration begins by bringing a claim under the applicable employment arbitration rules and procedures of the Judicial Arbitration and Mediation Services, Inc. ("JAMS") or any other dispute resolution provider agreed to by the parties, as then in effect and as modified by any superseding provisions in this DRP. JAMS' Employment Arbitration Rules may be found on the internet at www.jamsadr.com or by using an internet search engine to locate the "JAMS Employment Arbitration Rules." All claims in arbitration must be raised within the same time limits

(statutes of limitation) that would apply in court. The arbitrator will be selected by mutual agreement of the parties and will be an experienced attorney licensed in the state where the arbitration will be held or retired judicial officer who served in that state as a judge or another qualified individual. If the parties cannot agree on an arbitrator, the applicable JAMS (or, if agreed to by the parties, another dispute resolution provider's) rules will apply to appoint an arbitrator. The arbitration will be conducted no more than 75 miles from the location where you last regularly worked for your worksite employer, unless the parties agree to another location.

d. How Arbitration Proceedings Are Conducted

In arbitration, the parties will have the right to file motions challenging the pleadings (e.g. demurrer or motion to dismiss), conduct adequate civil discovery, bring dispositive motions (e.g. summary judgment/adjudication), and present witnesses and evidence to present their cases and defenses. The specific provisions of this DRP and the applicable rules of JAMS (or any other dispute resolution provider agreed to by the parties) will direct the arbitrator in decisions regarding conducting the arbitration. To the extent any applicable arbitration rules are inconsistent with the terms of this DRP, the terms of this DRP will be controlling.

There will be no right or authority for any dispute to be brought, heard or arbitrated as a class, collective, representative or private attorney general action, or as a member in any purported class, collective, representative or

private attorney general proceeding, including, without limitation, uncertified class actions ("Class Action Waiver"); provided, however, that you may opt out of the Class Action Waiver by clicking this box ☐ before you click below to acknowledge this TCA. Disputes regarding the validity and enforceability of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, representative or private attorney general action and (2) a civil court of competent jurisdiction finds all or part of the Class Action Waiver unenforceable, the class, collective, representative and/or private attorney general action must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration. No employee will be retaliated against, disciplined or threatened with discipline for exercising his or her rights under Section 7 of the National Labor Relations Act (NLRA) by the filing of or participation in a class, collective or representative action, but TriNet (and, if applicable, any TriNet customer or employee(s) of either TriNet or a TriNet customer interested in enforcing this DRP for its/their own benefit) retains the right to enforce this DRP and the Class Action Waiver under the Federal Arbitration Act and to seek dismissal of class, collective or representative actions.

During the arbitration each party will pay his, her or its own attorneys' fees, subject to any remedies to which that party may later be entitled under applicable law. In all cases where the law requires it, TriNet (and, if applicable, any TriNet customer or

employee(s) of either TriNet or a TriNet customer interested in enforcing this DRP for its/their own benefit) will pay the arbitrator's and arbitration fees. In cases in which apportionment of the arbitrator's and arbitration fees is permitted by applicable law, these fees will be divided between the parties as is required by law and determined by the arbitrator.

e. The Arbitration Hearing And Award

Within 30 days after the end of the arbitration hearing, any party may file a written brief by providing copies to the arbitrator and the other parties. The arbitrator may award any remedy warranted under applicable law and will include a written opinion providing reasoned explanations for the decision. Neither a party nor the arbitrator will disclose the existence, content, or results of the arbitration without the prior written consent of all parties, unless required by law or legal process or in accordance with a decision by the arbitrator that such disclosure is permitted by law. To the extent, if at all, allowed or required by applicable law, the award may be confirmed, corrected, or vacated by a court of competent jurisdiction, and a court of competent jurisdiction will have the authority to enter judgment based on a final arbitration award.

f. Enforcement Of The DRP

Subject to the exceptions provided herein, this DRP is the full and complete agreement for resolution of covered disputes between you and TriNet (and its employees, officers and agents) and/or, if you work for one of TriNet's customers, between you and your company (and its employees, officers and agents). If any portion of this DRP is determined to be

unenforceable, the remainder of this DRP will still be enforceable, subject to the specific exception in section (d), above.

10. Acknowledgement

By acknowledging below, I confirm that I have read and understand the contents of this TCA (including, but not limited to, the DRP), that I have the responsibility to read and familiarize myself with the TriNet Employee Handbook and any additional policies for the company I work for and that I agree to abide by the terms and conditions set forth above in this TCA, including but not limited to the DRP, as well as the policies and procedures set forth in the Employee Handbook and additional policies.

I understand that, unless prohibited by law or expressly provided in a written agreement signed by the President of TriNet, my employment with TriNet is at-will and either I or TriNet can terminate the employment relationship at any time, with or without cause. I understand that the policies, procedures and benefits of TriNet and the company I work for can be changed at any time, and I understand and acknowledge that none of the at-will-related language in this TCA, the Employee Handbook or elsewhere is intended to limit the exercise of rights under Section 7 of the NLRA. Finally, I agree to abide by the terms and conditions set forth above and the policies and procedures set forth in the Employee Handbook and additional policies.

Exhibit B - Electronic Verification of Signature

(See insert next page)

	EMPLID	NAME	EMAIL_ADDR	COMPANY	EFFDT	ACCEPTED
▶ 1	00001824692	Moriana,Angie	angie.moriana@vikingcruises.com	7A9	6/2/2016 5:24:06 PM	Y

16.

96.

Exhibit C - Acceptance Email

From: hrpassport_tca <hrpassport_TCA@trinet.com>

Sent: Thursday, June 02, 2016 2:24 PM

To: angie.moriana@vikingcruises.com

Subject: TriNet's (1) Website Privacy Policy; (2) Terms and Conditions Agreement (TCA) & (3) Health Care Notification

* * *

Hello,

Each and every day, TriNet strives to deliver world-class HR services to our clients and their employees. It is our privilege to serve as a strategic partner to small businesses.

We take the confidentiality of your personal information very seriously and this email is to call your attention to the measures we take to protect your privacy in our website privacy policy: Terms of Use/Privacy Policy.

In addition, we are occasionally required to send you notifications to meet legal and compliance requirements. This email is such a notification and has two attachments in order to: (1) confirm your acceptance of Tri Net's Terms & Conditions Agreement when you clicked through into TriNet Passport® on 06/02/2016 05:24 pm; and (2) deliver a standardized disclosure regarding health care continuation coverage.

The second attachment is required to be given when an employee becomes eligible for TriNet benefits, and TriNet routinely provides it to ensure that every eligible beneficiary receives it. A different

COBRA notice is required in the event of employment termination. The second attachment is not that notice. We are legally required to provide the second attachment to everyone who is eligible for TriNet benefits.

We recommend you review the privacy policy and retain your copy of these attachments as you would any other important electronic document.

Please contact the TriNet Solution Center at 800.638.0461, Monday - Friday, 4:30 a.m. - 9:00 p.m. PT, if you have any questions.

Best regards,

TriNet