MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. OXF-25-568

MARITZA Y. TERUEL

Plaintiff - Appellant

v.

SCHIAVI HOMES LLC

Defendant - Appellee

ON APPEAL FROM OXFORD COUNTY SUPERIOR COURT

BRIEF OF PLAINTIFF/APPELLANT

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INTRODUCTION

This is a relatively simply wage and hour case involving Defendant/Appellee Schiavi Homes LLC's failure to pay Plaintiff/Appellant Maritza Teruel her unpaid sales commissions. Although the summary judgment record firmly establishes that Ms. Teruel is entitled to some measure of unpaid commissions, the trial court inappropriately granted Schiavi's motion for summary judgment based on two erroneous rulings.

The trial court held that Ms. Teruel is not entitled to recovery of unpaid commissions because Schiavi allegedly overpaid her for sales commissions in the amount of $4947.11. As set forth in detail below, such an overpayment is literally impossible under Schiavi's commission policy, and a witness has yet to appear who can explain how it happened. Ms. Teruel's commissions were paid out in two equal installments, the first based on the projected profit for a project and the second based on actual profit. To the extent that the projected numbers at the front end of a project represented more than fifty percent of the actual profit at the end of the job, Ms. Teruel's back end commission was adjusted downward to avoid any such overpayment.

In addition to the complete lack of explanation from Schiavi as to how this overpayment occurred, the data presented by Schiavi in support of this allegation consists almost exclusively of conclusory "payroll summaries" prepared by

Schiavi's Vice President, Anna Cyr, with no backup or explanation as to how these overpayment numbers were arrived at, the identification of any projects for which Ms. Teruel was overpaid, etc.

Ms. Teruel has presented an affidavit from Amy Wouri, Schiavi's former Director of Finance. Schiavi's own commission policy confirms that Ms. Wouri was directly involved in the processing of these sales commissions, and Ms. Wouri provided sworn testimony, *based on her personal knowledge as Schiavi's former Director of Finance,* that she is not aware of how such an alleged overpayment could have possibly occurred.

Ignoring all of the other evidence in the summary judgment record on this issue, the trial court erroneously held that Ms. Wouri's testimony (and Ms. Teruel's identical sworn testimony on this issue) is improperly based on a lack of personal knowledge and is therefore insufficient to rebut Schiavi's allegation that an overpayment did in fact occur. Ms. Teruel respectfully submits that the complete summary judgment record and a proper reading of Ms. Wouri's testimony generates a genuine issue of material fact on this issue, as there is ample evidence from which a factfinder at trial could reject Schiavi's rather shaky assertion that Ms. Teruel was overpaid for her commissions. As the summary judgment record otherwise confirms that Ms. Teruel is entitled to some measure of unpaid commissions at trial, Schiavi's motion for summary judgment should have been denied on this basis alone, and Ms. Teruel's unpaid wage claims pursuant to 26 M.R.S.A. 626 and her breach of contract claim should be permitted to proceed to trial.[1]

Ms. Teruel also claims that she is entitled to unpaid commissions for sales on eight projects for Coastline Homes, one of Schiavi's assumed corporate names. Schavi has declined to produce any discovery for these Coastline projects, including the production of requested "job cards," essentially a profit and loss statement, which would confirm the profitability of these jobs and therefore Ms. Teruel's entitlement (or lack thereof) to a sales commission. As justification for its refusal to produce this information, Schiavi claimed that Ms. Teruel was employed by Schiavi Custom Builders, not Coastline Homes. On summary judgment, the trial court agreed with Ms. Teruel that Coastline Homes and Schiavi Custom Builders are part of the same company, but dismissed Ms. Teruel's claim for unpaid Coastline Homes commissions because she failed to present evidence confirming whether these Coastline jobs were profitable, *which is precisely the information that Schiavi refused to produce*.

As set forth below, it is well-established that when an employer cannot produce accurate records for an employee's wages, the employee is then entitled to submit an estimate of the wages she is owed. Accordingly, Ms. Teruel submitted

[1] Plaintiff/Appellant Ms. Teruel is not contesting the dismissal of her claim for unjust enrichment.

her estimate of unpaid commissions for the Coastline Homes projects, based on the profit figures for her Schiavi projects produced during discovery. In erroneously granting Schiavi summary judgment on this issue, the trial court completely ignored the relevant case law presented by Ms. Teruel and the undisputed fact that Schiavi failed to produce any information for these Coastline Homes projects.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Defendant Schiavi purports to specialize in "building affordable new homes within a 60-mile radius of Oxford, Maine. *Appendix* ("App."*)* at 37*,* ¶ 1. Specifically, Schiavi sells and builds custom modular and stick built homes. *Id.* ¶ 2. Schiavi operates under several assumed names, including "Coastline Homes of Oxford" and "Schiavi Custom Builders" ("SCB"), but the information summary on the Maine Secretary of State website confirms that these are just two assumed names for the same company, Schiavi Homes Limited Liability Company ("Schiavi"). *Id.* at 179 ¶ 1, 190.

At all times relevant to her claim for unpaid commissions, Ms. Teruel was employed by Schiavi as a Project Administrator, which is a sales position. *App.* at 179 ¶¶ 2-3. As Project Administrator, Ms. Teruel was responsible for helping Schiavi's customers complete the initial planning phase of a construction project. *Id.* ¶ 4. Once the initial planning phase was completed, each project would be passed from sales to the construction department. *Id.* ¶ 5.

<u>Ms. Teruel's Commissions</u>

Ms. Teruel's sales commissions were paid out in two installments, one at the beginning of a construction project and one at the end. Per Schiavi's applicable compensation policy, she was to receive "50% of the commission based on projected profit at the time of Conversion from Sales to Construction." *App*. at 40

¶¶ 31-32, 180 ¶ 8. Ms. Teruel would then receive the "balance of commission of actual profit paid at the time of project completion." *Id*. at 40 ¶ 33, 180 ¶ 9. Specifically, the "first commission payment is an upfront commission payment based upon projected profit and paid upon execution of the contract associated with each project." *App*. at 40, ¶ 31. "The upfront payment represents 50% of the employee's applicable commission rate multiplied by the project's projected profit based on the contract executed by customers." *Id.* ¶ 32. "The second payment, the balance of commission is based upon actual profit and paid at the time of project completion." *Id.* ¶ 33.

For each Schiavi construction project, the company maintained a "project card" or "job card," which is essentially a basic profit and loss statement for each job. *App. at 181* ¶ 21. The supporting documentation for these project cards, which includes supporting documentation for project expenses, payments, etc. were kept by Schiavi in a project file. *Id.* ¶ 22. "Schiavi uses its job cards to calculate the back-end commission by taking the actual profit of each project and multiplying that amount by the employee's applicable commission rate and deducting any upfront commission already paid to employees on that project. *Id*. at 40-41 ¶ 36.

For purposes of summary judgment, the parties agreed that Ms. Teruel had been paid out $13,965.21 for 38 SCB projects that had been completed when she left the company. *App*. at 14.

<u>Unfinished SCB Projects</u>

In addition to the commissions for the completed SCB projects, Ms. Teruel also claims that she is entitled to commissions on projects that were "unfinished but under contract at the time of her departure." Schiavi disputes this, as its commission policy provides that "if an employee resigns or is terminated from their position with the company prior to the completion of a project, commission on unfinished projects will not be paid." *App*. at 14 fn. 9. In its November 21, 2025 Order on Defendant's motion for summary judgment (the "MSJ Order"), the trial court agreed with Ms. Teruel's claim that she is entitled to commission for unfinished SCB projects. "Based on Schiavi Homes's commission policy, *"payment"* of 50% of Teruel's projected commissions was "expected . . . at the time of [c]onversion from Sales to Construction," which occurs when the contract is executed. (Cyr Aff. Ex. 2 at 2 (emphasis added); Def's Opp'n S.A.M.F. ¶ 5. Therefore, there is no dispute of material fact that Ms. Teruel was also owed fifty percent of the commissions for the unfinished projects which were put under contract prior to her departure." *Id*. at 14. For purposes of summary judgment, the trial court concluded that Ms. Teruel would've been entitled to at least an additional $1,244.82 for nine Schiavi projects that were "unfinished but under contract at the time of her departure." *Id.*

Unpaid Coastline Homes Commissions

Ms. Teruel has also identified eight jobs for which she performed work for projects under Schiavi's assumed name "Coastline Homes of Oxford." *App.* at 181 ¶ 23. Identifying these projects by the customers' last names, these eight Coastline Homes projects are: Terry, White, Harrington, Holly, Bellamare, Malia, Morris and Roberts. *Id.* at 182 ¶ 24. Ms. Teruel timely served Schiavi with discovery requests seeking all project files that she worked on while in Schiavi's employ on June 12, 2024, months before the discovery deadline, and followed up on her request for these records at the close of the discovery period. The sole basis for Schiavi's refusal to produce these records was its contention that Ms. Teruel worked for SCB, not Coastline Homes, and that therefore she is not entitled to any commissions for Coastline projects. *Id.* ¶¶ 25-26, 32, 182. The trial court ultimately rejected Schaivi's position in its MSJ Order, holding that Coastline Homes and SCB are the same company and that Coastline is just an assumed name for Defendant Schiavi. By extension, Schiavi's compensation policies confirm that she is entitled to commissions for Coastline jobs. *App*. at 8-9, fn. 2.

While Schiavi did produce some job cards, *i.e*. the profit and loss summaries on certain SCB projects, it produced no job cards for the eight Coastline Homes projects for which Ms. Teruel is now claiming that she is owed commissions. *Id.* ¶¶ 31-32. Nor did Schiavi produce any data confirming whether these eight Coastline Homes jobs were profitable or what Ms. Teruel's commission might be. *Id.* ¶ 33.

In the absence of any data whatsoever from Schiavi, Ms. Teruel has calculated her average Coastline commission from the twenty-three job cards produced by Schiavi which indicate a profit. *App.* at 183 ¶ 37, 197-198. The average commission on these job cards is $613.90. *Id.* ¶ 38, 197-198. Accordingly, Ms. Teruel conservatively estimates the commissions owed to her on the Coastline Homes projects at $4911.20 ($613.90 x 8 unpaid Coastline jobs). *Id.* at 183 ¶ 39, plus liquidated damages, costs and attorney fees pursuant to 26 M.R.S.A. § 626.

The trial court rejected this evidence because Ms. Teruel's summary did not purport to show whether these Coastline Homes projects were in fact profitable. *This is precisely the information that Schiavi inappropriately withheld by failing to produce the job cards for these projects*.

Ms. Teruel no longer seeks this discovery, as the law provides a clear and well-established remedy in these situations. Instead of rewarding Schiavi for its inappropriate behavior, as the trial court did, both the United States Supreme Court and the First Circuit have held that when an employer cannot produce accurate pay records as required by law, an employee is then permitted to estimate her unpaid wages to the best of her ability for purposes of both summary judgment and trial. This well-established case law and the undisputed fact that Schiavi flatly refused to produce any of these Coastline Homes records were completely ignored by the trial court in its MSJ Order.

Schiavi's Alleged Overpayment of Commissions

Based on the foregoing, Ms. Teruel is clearly owed some measure of unpaid commissions. However, Defendant Schiavi contends that it somehow overpaid Ms. Teruel $4947.11 in commissions and that this amount is higher than any amount due to Ms. Teruel for her unpaid commissions, therefore Ms. Teruel's claim fails. As set forth below in detail, Schiavi's commission policy has a self-correcting feature that simply does not allow for commissions to be overpaid, and Schiavi has failed to provide any explanation whatsoever for how such an overpayment could have occurred.

Schiavi's commission policy states that "if the up-front commission based on projected profit was more than the total commission to be paid based on actual profit, deductions will be made from consecutive commission payments." *App*. at 41 ¶ 37, 180 ¶ 10. In other words, if the front end commission based on projected profits ends up being more than 50% of the total commission based on the job card numbers at the end of the project, Ms. Teruel's back end commission would be adjusted downward to ensure that she only received the commission she was entitled to.

In support of Schiavi's contention that Ms. Teruel was overpaid, it relies on an affidavit from its Vice President, Anna Cyr. *App*. at 46-51, Ms. Cyr's affidavit relies exclusively on "payroll information" to conclude that Ms. Teruel accepted $18,912.32 in commissions on Schiavi projects, which is $4947.11 more than Schiavi alleges that Ms. Teruel rightfully earned. *Id*. at 50-51 ¶ 34. This "payroll information," attached to Ms. Cyr's affidavit as Exhibit 7, constitutes one paystub for the week of 12/21/20 purporting to show Ms. Teruel's earned commissions for 2020, and three "payroll summaries" presumably created by Ms. Cyr for 2021 – 2023. The payroll summaries are nothing more than conclusory numbers with no backup or other verifying data, no explanation as to how those numbers were arrived at, etc. *Id*. at 142-146.

Ms. Cyr's affidavit provides no explanation for how this alleged overpayment could've possibly occurred, given the plain and unambiguous terms of Schiavi's commission policy. No detail is provided as to which projects Ms. Teruel was overpaid on, when these overpayments occurred, etc. Nor is there any evidence in the summary judgment record indicating that Defendant raised any alleged overpayment with Ms. Teruel at any time while she was employed or when she left the company until the instant lawsuit was filed.

In her opposition brief, Ms. Teruel provided compelling evidence that she was not in fact overpaid, in the form of an affidavit from Amy Wouri, Schiavi's former Director of Finance, who was directly involved in the processing of Ms. Teruel's commissions. *App*. at 199-200. Schiavi's own commission policies, which are included in the summary judgment record, confirm that Ms. Wouri has personal knowledge of the mechanism or lack thereof by which any overpayment to Plaintiff Ms. Teruel could have possibly occurred. In particular, Schiavi's March 19, 2021 policy provides as follows:

> Payment of Commission [for the second commission payment] will be initiated by Construction and completed by Accounting in the following manner:
>
> - Construction will email the *Director of Finance* at the completion of our scope of work
> - *Director of Finance* will develop the job card with all revenue and debits for the job within 4 weeks and email to the location General Manager and Construction Manager.
> - Construction Manager shall review all information to ensure that all expenses have been applied to the job prior to closing the job.
> - When the job card is accurate and approved by General Manager and Construction Manager, commissions will be paid out.

App. at 40 ¶¶ 28-33, 61 (emphasis added). With respect to Ms. Teruel's commissions, Ms. Wouri provided the following relevant testimony:

- Ms. Wouri has personal knowledge of the terms of Ms. Teruel's compensation with Schiavi.

- Ms. Wouri was not aware of Ms. Teruel being overpaid for her earned commissions while at Schiavi. Per Schavi's commission policy, any "overpayment" that she received at that front end of a project was corrected by a downward adjustment at the end of a project, based on the total profit number.

- Ms. Wouri is unaware of any mechanism by which Ms. Teruel could have possibly been overpaid for her commissions while employed at Schiavi.

App. at 199-200, ¶¶ 2, 5-6.

Ms. Teruel also supplied an affidavit mirroring Ms. Wouri's testimony, specifically that she is unaware of how an overpayment could possibly occur under Schiavi's compensation policy. *App*. at 185-189 ¶¶ 13-15. At Schiavi's suggestion, the trial court construed these statement as indicating that somehow Ms. Wouri and Ms. Teruel lacked personal knowledge regarding whether an overpayment had in fact occurred and that therefore this testimony was not sufficient to create a genuine issue of material fact on this issue. On the contrary, Ms. Wouri is arguably the individual best situated to testify as to whether an overpayment could have possibly occurred.

The plain terms of Schiavi's compensation policy, the conclusory "payroll summaries" offered in support of the alleged overpayment with no detail provided as to how these overpayments could have possibly occurred, which jobs Ms. Teruel was overpaid on, the absence of evidence that this issue was raised while

Ms. Teruel was still employed by Schavi, etc., and Schiavi's former Director of Finance's testimony that such an overpayment would essentially be impossible and that she is unaware of any such overpayment are more than sufficient to create a genuine issue of material fact.

As set forth above, if there is no overpayment, Ms. Teruel is owed some measure of unpaid commissions from Schiavi and summary judgment should have been denied on Plaintiff's unpaid wage claims pursuant to 26 M.R.S.A. § 626 and her breach of contract claims.

The Termination of Ms. Teruel's Employment

In September 2023, Ms. Teruel took a leave of absence from Schiavi to have surgery on her shoulder. *App.* at 183 ¶ 40. When Ms. Teruel sought to return to work after Thanksgiving of that year, Schiavi's Vice President Anna Cyr informed her that there was no work for her, but if they could "come up with another position or duties" that Ms. Cyr would reach out. *Id.* ¶ 41. Following this conversation, Ms. Teruel considered her employment at Schiavi to have been terminated. *Id.* ¶ 42.

PROCEDURAL HISTORY

Plaintiff initiated this lawsuit on April 17, 2024. On July 11, 2025 Defendant Schiavi filed for summary judgment on all claims. The trial court granted Defendant's motion on November 24, 2025. Plaintiff filed her Notice of Appeal on December 10, 2025.

STATEMENT OF ISSUES

1. Did the trial court err in holding that there was no genuine issue of material fact with respect to Schiavi's allegation that Ms. Teruel was overpaid for her sales commissions?

2. Did the trial court err in holding that Ms. Teruel was not entitled to sales commissions for the Coastline Homes projects on which she worked?

ARGUMENT

STANDARD OF REVIEW

In reviewing a trial court's disposition of a motion for judgment as a matter of law, the Law Court "view[s] the evidence together with all justifiable inferences in the light most favorable to the party opposing the motion. The motion should not be granted if "any reasonable view of the evidence could sustain a verdict for the opposing party." *Maine Energy Recovery Co. v. United Steel Structures, Inc.*, 1999 ME 31, ¶ 6, 724 A.2d 1248, 1250, *quoting Lewis v. Knowlton*, 1997 ME 12, ¶ 6, 688 A.2d 912, 913

I. A GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO WHETHER PLAINTIFF WAS OVERPAID

This Court has stated that "we review a grant of summary judgment *de novo*, viewing the facts and any inference that may be drawn from them in the light most favorable to the nonprevailing party to determine if the statements of material fact and referenced record evidence generate a genuine issue of material fact. *Cookson v. Brewer School Dept*., 2009 ME 57, ¶ 11, 974 A.2d 276, 280, *citing Dyer v. Dep't of Transp*., 2008 ME 106, ¶ 14, 951 A.2d 821, 825. "An issue is genuine if there is sufficient evidence supporting the claimed factual dispute to require a choice between the differing versions; an issue is material if it could potentially affect the outcome of the matter." *Id., quoting Brown Dev. Corp. v. Hemond*, 2008 ME 146, ¶ 10, 956 A.2d 104, 108.

Summary judgment is not a substitute for trial. Thus, "[e]ven when one party's version of the facts appears more credible and persuasive to the court, a summary judgment is inappropriate if a genuine factual dispute exists that is material to the outcome," in which case "the dispute must be resolved through fact-finding," regardless of the nonmoving party's likelihood of success." *Id., quoting Arrow Fastener Co. v. Wrabacon, Inc*., 2007 ME 34., ¶ 18, 917 A.2d 123, 126 - 127.

Defendant Schiavi contends that it somehow overpaid Ms. Teruel $4947.11 in commissions and that this amount is higher than any amount due to Ms. Teruel for unpaid commissions, therefore Ms. Teruel's claim fails. The summary judgment record in this case firmly establishes that but for Schiavi's claimed offset, Ms. Teruel would be entitled to recover some amount of unpaid commissions at trial. Accordingly, Ms. Teruel's generation of a genuine issue of material fact on the issue of whether she was overpaid, standing alone, is sufficient to defeat Defendant Schiavi's motion for summary judgment.

As set forth in detail above, there are multiple facts that create a genuine dispute for trial. Perhaps most importantly, no party to this case has yet to explain how any such overpayment could possibly have occurred under Schiavi's commission policy, nor will any party presumably be able to do so at trial. Ms. Cyr's supplemental affidavit filed in support of Schiavi's Reply Memorandum fails to explain it, despite the fact that Ms. Teruel called Schiavi out in her opposition brief for this very failure. Neither Schiavi's former Director of Finance nor Ms. Teruel herself can explain how she could have possibly been overpaid for her commissions, and the "payroll information" Schiavi proffered in support of this allegation is in the form of conclusory "payroll summaries" that do not provide any explanation or backup for the figures contained within.

Ignoring all of the other problems with Schiavi's allegation that an overpayment had occurred, the trial court focused on Ms. Wouri and Ms. Teruel's testimony indicating that *based on their personal knowledge of Schiavi's compensation policies*, they were unaware of any mechanism by which Ms. Teruel could have been overpaid. After completely misconstruing this testimony as indicative of a lack of personal knowledge, the trial court held that this evidence was not "sufficient to dispute the facts asserted by Schiavi Homes, *citing Quintana-Dieppa v. Dep't of Army*, 130 F.4th 1, 9 (1st Cir. 2025) for the proposition that "Appealing to ignorance . . . does not create a genuine issue of material fact, since lack of knowledge does not contradict the proposition that the fact is true. Put another way, lack of personal knowledge as to the existence of certain facts does not amount to 'definite, competent evidence' controverting their truth.").

In *Quintana*, the First Circuit held that the plaintiff had failed to properly controvert the defendant's statement of material facts on the basis of her lack of personal knowledge. *Quintana*, 130 F 4th at 9, *quoting Chapman v. Finnegan*, 950 F.Supp. 2d 285, 292 n. 3 (D.Mass. 2013) ("A party opposing summary judgment cannot create a genuine issue of fact by denying statements, which the moving party contends are undisputed and supported by sufficient evidence, *on the basis that he lacks knowledge and information to admit or deny the statement*.") (emphasis added).

This is not at all the situation in the instant case. Ms. Wouri did not provide testimony revealing a lack of personal knowledge. Her testimony, provided in her capacity as Defendant Schiavi's former Director of Finance, and the commission policy cited above in the summary judgment record, confirm that based on her personal knowledge, Schiavi's alleged overpayment is simply not possible under Schiavi's policy, nor is she aware of any overpayments under this policy.

Based on the foregoing, Plaintiff Ms. Teruel has presented ample facts to the trial court generating a genuine issue of material fact as to whether she was in fact overpaid for her commissions, and there is no indication in the summary judgment record that *anyone* will be able to explain this alleged overpayment at trial. Based on the foregoing, the factfinder at trial can easily conclude that an overpayment to Ms. Teruel was simply impossible under Schiavi's commission policy and in fact did not occur.

Without the alleged $4911.00 overpayment, it is undisputed that Ms. Teruel is entitled to unpaid commissions in an amount to be determined at trial. Accordingly, Ms. Teruel respectfully requests that the trial court's November 21, 2025 Order granting Defendant Schaivi's motion for summary judgment be vacated in its entirety and that Ms. Teruel's claims pursuant to 26 M.R.S.A. § 626 and her breach of contract claim be permitted to proceed to trial.

II. PLAINTIFF IS ENTITLED TO SUBMIT HER ESTIMATE OF COASTLINE COMMISSIONS TO THE FACTFINDER AT TRIAL

The standard of review for this claim is identical to that applicable to first section of Ms. Teruel's brief. This Court reviews "a grant of summary judgment *de novo*, viewing the facts and any inference that may be drawn from them in the light most favorable to the nonprevailing party to determine if the statements of material fact and referenced record evidence generate a genuine issue of material fact." *Cookson v. Brewer School Dept*., 2009 ME 57, ¶ 11, 974 A.2d 276, 280, *citing Dyer v. Dep't of Transp*., 2008 ME 106, ¶ 14, 951 A.2d 821, 825.

The trial court's MSJ Order denies Ms. Teruel's claim that she is entitled to sales commissions for projects she procured for Coastline Homes. In issuing this ruling, the trial court fails to acknowledge that Schiavi has refused to produce *any* discovery on these jobs, including the project job cards from which the profitability of these jobs, and therefore Ms. Teruel's commissions, can be calculated. Instead, the trial court granted Schiavi summary judgment on this very basis, stating in its MSJ Order that Ms. Teruel has failed to produce any evidence of Coastline Homes' actual profits on which Ms. Teruel's calculation of commissions would be based. Given Schiavi's failure to provide this discovery, Ms. Teruel is entitled to present her best estimate as to her unpaid Coastline Homes commissions at trial, an argument that the trial court's MSJ Order completely neglected to address.

Courts have recognized that plaintiffs in wage and hour cases do not always have access to the records necessary to accurately calculate their wage and hour claims and are therefore permitted to rely on their best approximation of their unpaid wages. The United States Supreme Court has held that under the Fair Labor Standards Act, the federal analogue to Maine's wage and hour statute, it is the employer's burden "to keep proper records of wages, hours, and other conditions and practices of employment," because the employer is in a better position than the employee to do so. *Anderson v. Mt. Clemens Pottery Co*., 328 U.S. 680, 687 (1946) (superseded on other grounds by statute). "When employers violate their statutory duty to keep proper records . . . employees thereby have no way to establish the time spent doing uncompensated work . . . " *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 456 (2016).[2]

> When the employer has kept proper and accurate records the employee may easily discharge his burden by securing the production of those records. But where the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes a more difficult problem arises. The solution, however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employees labors without paying due compensation as contemplated by the Fair Labor Standards Act.
>
> In such a situation, we hold that an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.

Anderson, 328 U.S. 680, 688. The First Circuit has also addressed this situation in *Secretary of Labor v. DeSisto*, 929 F.2d 789, 792 (1st Cir. 1991:

> The burden of proof in FLSA cases was set forth by the Supreme Court over forty years ago in a case that has well withstood the passage of time. In *Anderson v. Mt. Clemens Pottery Co*., 328 U.S. 680, 66 S.Ct. 1187, 90 L.Ed. 1515 (1946), the Court focused

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[2] *See also* 26 M.R.S.A. § 622 (requiring Maine employers to keep accurate timekeeping and payment records with respect to their employees).

> specifically on the problem manifested in this case: How can an employee demonstrate a violation of the Act when the duty and the ability to keep adequate records rests solely with the employer, the adverse party? Recognizing that "[t]he solution . . . is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work," the Court imposed a significant burden on the employer. *Id.* at 687, 66 S.Ct. at 1192.

The First Circuit then cited *Anderson* for the proposition that when employment records confirming the basis for an unpaid wage claim are not available, the employee can produce "sufficient evidence to show the amount and extent of that [unpaid] work as a matter of just and reasonable inference," noting that "although the initial burden is on the employee . . .that burden is a minimal one. Where the employer has failed to [produce] adequate employment records, it pays for that failure at trial by bearing the lion's share of the burden of proof." Likewise, at the summary judgment stage, "if an employer's records are inaccurate or inadequate, an employee need only present "sufficient evidence to show the amount and extent of [the uncompensated work] as a matter of just and reasonable inference." *Kuebel v. Black & Decker*, 643 F.3d 352, 362 (2nd Cir. 2011).

Although the employee's initial burden of proof under *Anderson* and *Desisto* is minimal, it is not nonexistent. "The employee can satisfy the burden through "estimates based on his own recollection." *Kuebel*, 643 F.3d at 362. "Courts have routinely found that plaintiffs' testimony estimating their daily or weekly uncompensated hours and explaining the basis for their estimates is sufficient to meet their initial burden of proof, especially at the summary judgment stage." *Pineda v. Skinner Services, Inc*., 2020 WL 5775160, * 16 (D.Mass. September 28, 2020).

Anderson and *Desisto* contemplate that once an employee has made this required showing, the employer can then come forward with information challenging the employee's approximation of her wages. *Id.* This should not be permitted here, as Schiavi has willfully refused to provide this information during discovery.

In the absence of any data whatsoever from Schiavi, Ms. Teruel has calculated her average Coastline commission from the twenty-three job cards produced by Schiavi for SCB projects which indicate a profit. *App*. at 183, ¶ 37, 197-198. To be clear, this is literally the *only* information available to Ms. Teruel bearing on the profitability of the Coastline Homes projects that she worked on. The average commission on these job cards is $613.90. *Id*. ¶ 38, 197-198. Accordingly, Ms. Teruel conservatively estimates the commissions owed to her on the Coastline Homes projects at $4911.20 ($613.90 x 8 unpaid Coastline jobs). *PSAMF* ¶ 39, plus liquidated damages, costs and attorney fees pursuant to 26 M.R.S.A. § 626. Ms. Teruel's methodology for estimating her unpaid commissions is entirely consistent with the holdings in the *Anderson, Desisto, Kuebel* and *Pineda* cases cited directly above.

Accordingly, Ms. Teruel respectfully requests that the trial court's November 21, 2025 Order granting Defendant Schaivi's motion for summary judgment be vacated in its entirety and that she be permitted to present her estimate of unpaid Coastline Homes commissions at trial in support of her claim pursuant to 26 M.R.S.A. § 626 and her breach of contract claim.

CONCLUSION

For the reasons set forth above, Plaintiff/Appellant Maritza Y. Teruel respectfully requests that the trial court's November 21, 2025 Order granting Defendant's motion for summary judgment be vacated in its entirety, and that this case be permitted to proceed to trial.

Dated: March 10, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the Brief of Plaintiff/Appellant Maritza Y. Teruel have been served this date upon counsel of record by mailing copies by first-class mail, postage prepaid, addressed as follows:

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