STATE OF 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 THE OXFORD COUNTY SUPERIOR COURT

BRIEF OF APPELLEE SCHIAVI HOMES, LLC

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I. INTRODUCTION

By Order, dated November 21, 2025 (the "Order"), the Oxford County Superior Court ("Superior Court") held that the undisputed facts demonstrate that Defendant-Appellee Schiavi Homes Limited Liability Company ("Appellee" or "Schiavi") paid Plaintiff-Appellant Maritza Teruel ("Appellant" or "Teruel") all of the commissions to which she was entitled, if not more, and granted summary judgment in favor of Schiavi on all counts of Teruel's complaint alleging violation of 26 M.R.S.A. § 626 (Count I), breach of contract (Count II) and unjust enrichment (Count III). Appellant challenges only the Superior Court's Order granting summary judgment as to Counts I and II. This Court should affirm the Superior Court's Order in its entirety.

II. STATEMENT OF FACTS

A. Schiavi's Business Model

Schiavi specializes in building affordable new homes within a 60-mile radius of Oxford, Maine. Appendix ("App.") at 37, ¶ 1. Schiavi Custom Builders sells and builds custom modular and stick built homes. App. at 37, ¶ 2. Coastline Homes of Oxford offers affordable, high-quality mobile homes, generally at a lower price point than Schiavi Custom Builders projects. App. at 250, ¶ 4. Coastline Homes of Oxford and Schiavi Custom Builders maintain separate locations and sales teams, with separate goals and budgets. App. at 250, ¶ 6. Schiavi uses the acronyms "SCB" and/or "SCB-O" internally to refer to Schiavi Custom Builders, and "CLHO" to refer to Coastline Homes of Oxford. App. at 37, ¶ 3; App. at 250, ¶ 5. A sales team member's eligibility to earn commissions is tied to a single assigned location, which is set forth in Schiavi compensation plan documents. App. at 251, ¶ 7. There is no uniform commission rate for sales team members. App. at 251, ¶ 7.

B. Plaintiff's Employment History and Compensation Plan Documents

Schiavi first hired Teruel as a Home Planner on or about November 20, 2018, at which time she was eligible to earn commissions based on 3% on profits up to $550,000. App. at 37, ¶¶ 4-5. On or about March 25, 2019, Teruel's title changed to Planner's Assistant, with a commission rate of 1% up to $750,000 paid on gross profit per job. App. at 38, ¶¶ 7-8. On or about August 14, 2019, Teruel became Planner for the Schiavi Custom Builders location, with a commission rate of 1.25% up to 1.2M in gross profit. App. at 38, ¶¶ 11-12. Schiavi laid off Teruel on or about March 21, 2020 due to the COVID-19 pandemic, and rehired Teruel as a Project Administrator for Schiavi Custom Builders on or about October 19, 2020, with a commission rate of 1.25% up to $0.8M in gross profit. App. at 38, ¶¶ 13-14, 16.

On or about April 26, 2021, Teruel's Project Administrator compensation plan changed, and Teruel became entitled to earn commissions of 1% of gross profits for work on projects at the Schiavi Custom Builders location. App. at 39, ¶¶ 19-20. Teruel executed a compensation plan on December 23, 2021 identifying her location as Schiavi Custom Builders and providing for commission of 1.5% of all projects post construction profit. App. at 39, ¶ 23. Teruel executed a compensation plan, dated February 6, 2023, identifying her location as SCB and providing for commission of "1.5% of Gross Profit of all SCB Projects." App. at 39, ¶ 25.

Each of the October 19, 2020, April 26, 2021, December 23 2021, and February 6, 2023 compensation plans expressly state that the "Employee Handbook & Policy Manual [is] included in [the] employment contract." App. at 39-40, ¶¶ 17, 21, 24, 26.

Teruel acknowledged receipt and understanding of the terms of each and every Schiavi compensation plan, to include applicable commission rate, compensation terms, applicable location, and the express incorporation of Schiavi's employee handbook and policy manual ("Employee Handbook"). App. at 37-39, ¶¶ 6, 10, 12, 18, 22-25.

C. Schiavi Commission Policy

Schiavi's commission policy (the "Commission Policy") is maintained in its Employee Handbook. App. at 40, ¶ 28. Per Schiavi Commission Policy, commissions are made in two payments. App. at 40, ¶ 29. Sales team members receive "50% of the commission based on projected profit at time of Conversion from Sales to Construction."[1] App. at 41, ¶¶ 38, 40. 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. App. at 40, ¶ 32. The "[b]alance of commission of actual profit [is] paid at time of project completion" and after "the job card is accurate and approved by General Manager and Construction Manager." App. at 41, ¶¶ 38, 40. Such back-end commission is calculated by taking the actual profit of each project and multiplying that amount by the employee's applicable commission rate and deducting any upfront commission paid on that project. App. at 40, ¶ 36. In the event the "upfront 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, 39, 41.

Schiavi's Commission Policy, dated March 19, 2021, and in effect at the time of Teruel's separation, makes clear 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 42, ¶ 42. Schiavi presented the terms of the Employee Handbook, to include the Commission Policy, to Teruel and Teruel acknowledged receipt and understanding of the same. App. at 42, ¶¶ 43-44.

[1]At all relevant times, Ms. Teruel was a sales team member for purposes of calculating and paying commissions. App. at 40, ¶ 30.

The compensation plan documents and Commission Policy set forth the entire agreement between Schiavi and Teruel as to what her commission eligibility was to be, and when commissions would be paid. App. at 53-63. Teruel has not produced evidence of any additional contract between the parties.

D. Teruel's Separation

In September 2023, Teruel had surgery on her right shoulder. App. at 42, ¶ 45. After Teruel exhausted all her accrued vacation time, Schiavi provided Teruel with additional vacation time she had yet to accrue as a courtesy. App. at 42, ¶¶ 46-47. In October 2023,Teruel applied for, and was granted, unemployment based on separation due to lack of work effective September 22, 2023. App. at 42, ¶ 48. On or about November 8, 2023, Teruel expressed interest in returning to work the week after Thanksgiving; however, at that time, Schiavi Custom Builders did not have any active clients in planning and did not have work for her to perform. App. at 42-43, ¶¶ 50-51. Schiavi Vice President, Anna Cyr, informed Teruel that when Schiavi Custom Builders had work, it would let her know and that if she could not wait and needed to find another job Schiavi understood. App. at 43, ¶ 52. On November 18, 2023, Teruel went to the Schiavi office, cleaned out her desk and informed another employee she had been fired. App. at 43, ¶ 53. Teruel resigned on November 18, 2023. App. at 43, ¶ 54.

E. Earned Commission Payments

During her employment with Schiavi, Teruel was eligible to earn commissions, subject to controlling compensation arrangements and Schiavi Commission Policy, on forty-seven (47) Schiavi Custom Builders properties (the "Schiavi Custom Builders Projects"). App. at 43, ¶ 56. Of the forty-seven (47) Schiavi Custom Builder Projects, thirty-eight (38) closed prior to Teruel's separation from Schiavi. App. at 43, ¶ 57. Based on gross profits and subject to controlling commission rates set forth in applicable compensation plans and the Commission Policy, Teruel earned commissions totaling $13,965.21 on the thirty-eight Schiavi Custom Builders Projects that closed prior to her separation. App. at 44, ¶ 60.

Schiavi paid Teruel commissions as follows: $2,958.94 in 2019, $3,823.15 in 2020, $3,909.77 in 2021, $5,500.82 in 2022, and $2,719.64 in 2023, totaling **$18,912.32**. App. at 44, ¶¶ 61-66. Ms. Teruel accepted $18,912.32 in commission payments. App. at 44, ¶ 66.

Nine (9) Schiavi Custom Builders Projects closed after Teruel's separation: Minion, Robinson, Brackett, Cianbro, Franks-Woods, Gray, MacDonald, Pulsifer, and Salve (the "Unfinished SCB Projects"). App. at 43, ¶ 58. Per Schiavi Commission Policy, and as acknowledged by Ms. Teruel, Teruel did not earn commission on the Unfinished SCB Projects. App. at 42-43, ¶¶ 42, 44, 59.

Even if Ms. Teruel had been employed with Schiavi at the time of project completion and gross profit calculation of the Unfinished SCB Projects, Teruel would have earned a total of $2,489.64 in commissions, the 50% upfront payment of which was $1,244.82, still resulting in overpayment to Teruel. App. at 44, ¶ 67. The evidence is indisputable that Schiavi paid Teruel all earned commissions, and more. App. at 42-45, ¶¶ 47, 55, 60, 66, 67, 70.

F. Coastline Homes of Oxford Projects

Without evidence, Teruel claims to be owed an undetermined amount for work performed on eight (8) Coastline Homes of Oxford projects (the "Coastline Homes of Oxford Projects"), based on an unsubstantiated firm understanding between herself and Schiavi's management. Brief of Plaintiff/Appellant, dated March 10, 2026 ("Appellant Br."), p. 8; App. at 187, ¶ 18; App. at 221 ¶ 23. Teruel also improperly blames her lack of evidence on Schiavi's failure to produce "project files" related to the Coastline Homes of Oxford Projects. *Id.*, at p. 11. Teruel filed a motion to extend discovery and a letter requesting a Rule 26(g) hearing regarding unspecified "project files" at 4:23pm and 4:50pm, respectively on April 14, 2025, the discovery deadline in this matter. App. at 4, 228. The parties appeared before the Superior Court on May 5, 2025. App. at 5, 228. After a full opportunity to be heard on Appellant's motion to extend discovery and Rule 26(g) request, the Superior Court denied Appellant's motion and declined to direct Schiavi to produce any additional discovery. *Id*. Discovery closed on April 14, 2025, with no pending discovery disputes. *Id*.

G. Superior Court Findings

The Superior Court weighed the summary judgment record before it in the light most favorable to Teruel, the non-moving party, and granted summary judgment in favor of Schiavi on all claims. App. at 8-18. As to the Schiavi Custom Builders Projects, the Superior Court held: "the undisputed facts demonstrate that Teruel was paid at least, if not more, than she was entitled to for SCB projects." App. at 15. As to the Coastline Homes of Oxford Projects, the Superior Court held that "Teruel has failed to introduce any competent evidence of the profits earned from each Coastline project or even whether any projects were in fact profitable" and "Teruel has failed to demonstrate that Schiavi Homes breached any compensation plans." App. at 16.

With respect to both the Schiavi Custom Builders Projects and Coastline Homes of Oxford Projects, the Superior Court held that Teruel failed to set forth a prima facie case for breach of contract or unpaid wages. App. at 15-16. Teruel has not appealed the Superior Court's dismissal of her unjust enrichment claim. Appellant Br., p. 6.

III. ISSUES PRESENTED

1. Did the Superior Court err in granting summary judgment in favor of Schiavi on Appellant's claim for unpaid wages pursuant to 26 M.R.S.A. § 626?

2. Did the Superior Court err in granting summary judgment in favor of Schiavi on Appellant's claim for breach of contract?

IV. ARGUMENT

A. Standard of Review

The Law Court reviews "the grant of a motion for summary judgment de novo, viewing the evidence in the light most favorable to the party against whom summary judgment has been granted in order to determine if there is a genuine issue of material fact." *Brady v. Cumberland County*, 2015 ME 143, ¶ 10, 126 A.3d 1145 (internal citations omitted). "A fact is material if it has the potential to affect the outcome of the case." *LePage v. Bath Iron Works Corp.*, 2006 ME 130, ¶ 9, 909 A.2d 629. A genuine issue exists only where "sufficient evidence supports a factual contest to require a factfinder to choose between competing versions of the truth at trial." *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573. Summary judgment is appropriate "if the non-moving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation." *Dyer v. Dept. of Transportation*, 2008 ME 106, ¶ 14, 691 A.2d 821; *Straughn v. Delta Air Lines, Inc.*, 250 F.3d 23, 33 (1st Cir. 2001). Summary judgment is no longer considered to be an extreme remedy in Maine. *Curtis v. Porter*, 2001 ME 158, ¶ 7, 784 A.2d 18.

To survive a defendant's motion for summary judgment, the plaintiff must establish a prima facie case for each element of her cause of action. *Bell v. Dawson*, 2013 ME 108, ¶ 16, 82 A.3d 827. This standard requires sufficient evidence to allow a factfinder to make a determination without resorting to speculation. *Id*. The Court "will affirm the grant of a summary judgment against a plaintiff who presents insufficient evidence to support an essential element in her cause of action, such that the defendant would be entitled to judgment as a matter of law on that state of evidence at a trial." *Id*.

B. Summary Judgment is Warranted on Plaintiff's 26 M.R.S.A. § 626 and Breach of Contract Claims

As the Superior Court held, "[t]he focus of both of Teruel's claims for unpaid wages pursuant to 26 M.R.S.A § 626 and breach of contract hinges on whether Teruel has been properly compensated pursuant to her compensation plans and the accompanying commission policy." App. at 13.

Appellant concedes that the terms of her compensation are controlled by Schiavi compensation plan documents and Schiavi's Commission Policy and further concedes her contemporaneous acknowledgment and understanding of each. Based on the application of the admittedly controlling and accurate compensation plan documents, Schiavi has presented uncontroverted evidence of the profitability of the projects for which Teruel was eligible to earn commission, the calculation of respective earned commission per project, and proof of payment of commissions from 2019-2023 exceeding earned commissions.

Because she cannot challenge Schiavi's indisputable evidence, Appellant contends that there is a single genuine issue of material fact, namely, whether Schiavi in fact *overpaid* commissions, because Appellant simply cannot understand how that could have happened. Such argument, however, is unavailing for the purposes of establishing a genuine issue of material fact that would preclude entry of summary judgment in Schiavi's favor. Schiavi is entitled to summary judgment unless Teruel introduces competent evidence that she was *underpaid*. Appellant has failed to do so.

i. The Terms of Plaintiff's Compensation Plan and Commission Policy Control

Although 26 M.R.S.A. § 626 creates a statutory right for former employees to seek payment, it is well-settled that the *entitlement* to payment, including bonus and commission payment, is governed solely by the terms of the employment agreement, and not Section 626. *See Purdy v. Community Telecomm. Corp.,* 663 A.2d. 25, 28-29 (Me. 1995) (wages due to employee determined by reference to employment agreement); *Bernier v. Merrill Air Eng'rs,* 2001 ME 17, ¶¶ 2, 9, 770 A.2d 97, 100-01 (terms of a memorandum promising a commission controlled in the section 626 analysis). Compliance with a compensation policy is a prerequisite to recovery of unpaid wages. *Purdy,* 663 A.2d. at 28.

Here, the entirety of the compensation arrangement between Schiavi and Teruel is set forth in the duly executed controlling compensation plan documents which specify applicable commission rate, compensation terms, applicable Schiavi business location, and expressly incorporate Schiavi's Employment Handbook &

Policy Manual, to include Schiavi's Commission Policy, in the "employment contract." App. at 53-63.

The Commission Policy, incorporated into the compensation agreement, sets for the manner, timing, and accrual of commission payments:

- Sales team members receive "50% of the commission based on projected profit at time of Conversion from Sales to Construction." App. at 41, ¶¶ 38, 40.
- The "[b]alance of commission of actual profit [is] paid at time of project completion" and "[w]hen the job card is accurate and approved by General Manager and Construction Manager, commissions will be paid out." App. at 41, ¶¶ 38-41.
- If the "upfront 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, ¶¶ 39, 41.
- "If any 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 42, ¶ 42.

Teruel agreed to be bound by, and was paid at all relevant times pursuant to, the terms of the compensation plan documents and Commission Policy, as set forth in the Employee Handbook, as evidenced by Ms. Teruel's separate acknowledgment of receipt and understanding of (i) every compensation plan document and (ii) the Employee Handbook, to include Schiavi's Commission Policy. App. at 37-42, ¶¶ 6, 10, 12, 18, 22-25, 44.

ii. Schiavi Overpaid Teruel

Appellee has demonstrated that, based on undisputed project profitability and subject to controlling compensation agreements and Schiavi Commission Policy, Appellant earned $13,965.21 in commission on the thirty-eight (38) Schiavi Custom Builders Projects that closed prior to her separation from Schiavi. App. at 44, ¶ 60. For each project, Appellee cited in the summary judgment record the respective project name, contract date, gross profit as supported by produced job cards, and controlling compensation plan documents based upon contract date. App. at 44, ¶ 60, App. at 53-63, 67-140. Teruel expressly "admit[ted] that the documents referenced . . . are cited correctly." App. at 176, ¶¶ 60, 66. Appellant objected only that the "data is being used to suggest that Ms. Teruel received more commissions than she earned while at Schiavi," which statement does not properly deny or qualify Schiavi's statements of material fact, and is therefore admitted. App. at 11. There is no dispute of material fact as to the earned commission for the thirty-eight Schiavi Custom Builders Projects completed prior to Appellant's separation. App. at 14.

In addition, Schiavi presented evidence that based on gross profit calculation and controlling compensation plans applicable to the Unfinished SCB Projects, even if Teruel had remained employed through project completion and gross profit calculation on such projects, Teruel would have earned $2,489.64,[2] 50% of which is $1,244.82, entitling Teruel to a maximum of $15,210.03 in commission on all Schiavi Custom Builders projects. App. at 14; App. at 44, ¶ 67, App. at 53-63, 147-165. Appellee similarly produced evidence that Schiavi paid Teruel, and Teruel accepted $18,912.32 in commissions from 2019-2023. App. at 44, ¶ 66, App. at 141-146. Again, Teruel conceded that the proof of payment evidence relied upon by Schiavi is accurate. App. at 178, ¶ 66.

The undisputed facts demonstrate that Teruel was overpaid.

iii. Teruel Has Failed to Introduce Evidence of Underpayment

In her appeal, Appellant asserts that "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." Appellant Br., p. 20 (emphasis added). Not surprisingly, Appellant fails to cite any record evidence in support of such baseless claim.

Instead, Appellant argues only that "[n]either Schiavi's former Director of Finance nor Ms. Teruel herself can explain how she could have possibly been

[2] Appellant herself admitted, without qualification, that even if she had been employed with Schiavi at the time of project completion and gross profit calculation of the Unfinished SCB Projects, she would not have earned more than $2,489.64 in commission payments on such projects. App. at 178, ¶ 67.

overpaid."[3] Appellant Br., p. 21. Interestingly, Teruel does not challenge the Superior Court's finding that Teruel's own appeal to ignorance does not create a genuine issue of material fact, but argues only that the Superior Court should have considered that former Director of Finance, Amy Wuori ("Wuori"), allegedly has "personal knowledge [that] Schiavi's alleged overpayment is simply not possible under Schiavi's policy, nor is she aware of any overpayments under this policy." Appellant Br., p. 22. Not only is the interpretation of unambiguous policy language a matter of law, not a question of fact, but critically, neither Teruel nor Wuori alleges to have personal knowledge of *underpayment* of commissions by Schiavi.[4] *See Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 11, 814 A.2d 989. Accordingly, the Superior Court appropriately held that Teruel's and/or Wuori's lack of understanding as to Schiavi's overpayment of commissions is not sufficient to dispute the facts asserted by Schiavi which undeniably demonstrate that Teruel was

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[3]Appellant also purports to allege that the proof of payment introduced by Schiavi does "not provide any explanation or backup for the figures contained within." Appellant Br., p. 21. However, Teruel admits the accuracy of the documents evidencing proof of payments to Teruel, and failed to properly deny or qualify Schiavi's evidence, deeming the fact of Schiavi's commission payments to Teruel admitted. App. at 177, ¶¶ 61-66.

[4]Moreover, it is indisputable that Ms. Wuori, a non-party former employee of Schiavi, has not had access to or review of Schiavi records for over two years, does not purport to have personal knowledge of the terms of any compensation plans executed by Plaintiff, did not sign any of Plaintiff's compensation plan documents on behalf of Schiavi, had no supervisory authority related to Teruel's employment, was never responsible for setting the compensation terms of any sales team member, including Teruel, did not have authority to negotiate the compensation terms of any sales team member, including Ms. Teruel, and did not have discretion or authority to consider, recommend, or facilitate the issuance of commission payments to any sales team member, including Teruel, outside the scope of their respective written compensation plan documents and controlling company policy. App. at 220, 253-254.

paid *at least, if not more,* than she was entitled to for Schiavi Custom Builders Projects. App. at 15.

Teruel has failed to set forth a prima facie case for breach of contract or unpaid wages pursuant to 26 M.R.S.A. § 626, and accordingly, Schiavi is entitled to summary judgement as to all Schiavi Custom Builders Projects.

iv. Teruel Has Failed to Present Evidence of Entitlement to Coastline Homes of Oxford Project Commissions

Teruel claims, without evidence, that she is entitled to unpaid commissions for sales on eight Coastline Homes of Oxford Projects. A contract exists only "if the parties mutually assent to be bound by all its material terms, the assent is either expressly or impliedly manifested in the contract, and the contract is sufficiently definite to enable the court to ascertain its exact meaning and fix exactly the legal liabilities of each party." *Sullivan v. Porter*, 2004 ME 134, ¶ 13, 861 A.2d 625. "[W]hen interpreting a contract, a court needs to look at the whole instrument." *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 12, 814 A.2d 989. Here, the "whole instrument" refers to the controlling compensation plan documents and the incorporated Employee Handbook and Commission Policy, each of which Teruel signed and acknowledged.

Teruel admits that (i) her compensation plan in effect at the time of her separation limits her commission eligibility to 1.5% of gross profits of all SCB projects; (ii) SCB and/or SCB-O refer to the Schiavi Custom Builders location; and

(iii) her prior compensation plans identified Teruel's eligible commission location as Schiavi Custom Builders. App. at 201, 203-205, 213, ¶¶ 3, 12, 16, 20, 23, 25, 68. No compensation plan for Teruel refers to eligibility to earn commissions on Coastline Homes of Oxford or CHLO projects.[5] App. at 53-59.

Acknowledging that there is no compensation plan document entitling her to commissions on Coastline Homes of Oxford Projects, Teruel alleges that her entitlement to commissions on Coastline Homes of Oxford Projects arises from an undocumented "firm understanding" with unnamed "management," that is separate from her compensation plan documents.[6] App. at 225, ¶ 34; *see Purdy*, 663 A.2d at 28 (rejecting the employee's contention that the employer informally agreed to pay employee commissions). Of course, Teruel provides no evidence of her "firm understanding" other than self-serving conclusory testimony, which should not be given weight. App. at 225, ¶ 34. The Court may not consider an affidavit that is nothing more than an attempt to manufacture an issue of fact in order to survive

[5]Coastline Homes of Oxford and Schiavi Custom Builders maintain separate locations and sales teams. App. 250, ¶ 6. A sales team member's eligibility to earn commissions is tied to a single assigned location, which location is set forth in Schiavi compensation plan documents. App. at 251, ¶ 7. There is no uniform commission rate for sales team members. *Id.*

[6]Teruel does not challenge the content or completeness of her compensation plan documents but suggests instead that the logo "Schiavi Group" should somehow imply eligibility to earn commissions at other locations. This assertion fails as a matter of fact and law. Even if Schiavi Custom Builders and Coastline Homes of Oxford are "assumed names" of Schiavi, Schiavi has presented evidence that Schiavi Custom Builders and Coastline Homes of Oxford maintain separate business locations and sales teams and offer products at different price points. App. at 250. Further, Teruel's statement that she "obviously" would not have worked on Coastline Homes jobs if she were not going to receive a commission is rendered unreliable by the fact that Teruel was paid hourly in addition to her Schiavi Custom Builders commission eligibility. App. at 53-59, 141-146.

summary judgment. *Orta-Castro v. Merck, Sharp, Dohme Quimica P.R., Inc.*, 447 F.3d 105, 110 (1st Cir. 2006).

Teruel has otherwise failed to introduce any competent evidence of her entitlement to unpaid commissions on Coastline Homes of Oxford Projects, including evidence regarding the execution of a customer contract, project completion, profitability, or controlling compensation plan. App. at 225. Notably, Teruel does not even allege that she completed the sale on a single Coastline Homes of Oxford Project, even though she makes such allegation with respect to the Unfinished SCB Projects. App. at 188, ¶¶ 29, 37.

Teruel disingenuously suggests that she has no choice but to submit wildly speculative commission estimations because Schiavi failed to produce discovery. However, during discovery, Teruel did not notice or take a single deposition, produce a single document, produce a single witness statement or declaration, issue a single subpoena, serve a single discovery deficiency letter, or make a motion to compel discovery. Teruel filed a motion to extend discovery and a letter requesting a Rule 26(g) hearing regarding unspecified "project files" at 4:23 p.m. and 4:50 p.m., respectively, on April 14, 2025, the discovery deadline in this matter. App. at 4. The parties appeared before the Superior Court on May 5, 2025. App. at 5. After a full opportunity for the parties to be heard, the Superior Court denied Teruel's motion and declined to direct Schiavi to produce any additional discovery. App.

at 5. Discovery closed on April 14, 2025, with no pending discovery disputes before the Superior Court. Teruel's discovery shortfalls were not properly before the Superior Court on Schiavi's Motion for Summary Judgment, nor before this Court on appeal.

Unbelievably, even Teruel's "best estimate" of Coastline Homes of Oxford Project profits and estimated commissions is tragically flawed. Appellant Br., p. 27. For example, Teruel claims to rely on the profitability of twenty-three (23) Schiavi Custom Builders projects but actually cites to a table with twenty-five (25) profitable projects.[7] Appellant Br., p. 27; App. 197-198. Of those twenty-five projects, twenty-one (21) are Schiavi Custom Builders Projects on which Teruel earned commissions, and four are Unfinished SCB projects. App. at 67-68, 147, 197-198, 227-228 ¶¶ 37-39. Teruel misrepresents the applicable commission rate and resulting earned commission of nineteen (19) of twenty-one (21) completed Schiavi Custom Builders Projects, which rates and commission amounts Teruel previously acknowledged are accurate. App. at 67-68, 147, 176 ¶ 60, 178 ¶ 66; 197-198, 227-228 ¶¶ 37-39. In addition, the cherry-picked profitability of past Schiavi Custom Builders Projects at a different price point than Coastline Homes of Oxford Projects is not a reliable indicator. "It is well settled law that damages are not recoverable

[7]Conveniently, Teruel ignores the fifteen (15) Schiavi Custom Builders projects that were unprofitable. App. at 67-68, 147.

when uncertain, contingent, or speculative. Damages must be grounded on established positive facts or on evidence from which their existence and amount may be determined to a probability. They must not rest wholly on surmise and conjecture." *Michaud v. Steckino*, 390 A.2d 524, 530 (Me. 1978).

In addition, the case law on which Appellant purports to rely is also procedurally and factually inapplicable, in no small part because Teruel has not alleged a FLSA claim, nor introduced credible evidence of a statutory violation or breach of contract by Schiavi or a failure to maintain adequate records of an employee's hours. *See e.g., Tyson Foods Inc. v. Bouaphakeo*, 577 U.S. 442 (2016) (Iowa class and collective action respondents were permitted to introduce a representative sample based on an expert witness's estimation of average time that employees spent dressing in protective gear could be used to show predominance of common questions of law or fact to fill an evidentiary gap created by the employer's failure to keep adequate records); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946) (remanding case to determine the amount of walking time where uncertainly lied only in the amount of damages arising from a statutory violation by the employer); *Pineda v. Skinner Servs., Inc.*, 2020 WL 5775160, *17 (D. Mass. Sept. 28, 2020) (plaintiffs' expert report, which relied on employee testimony including the interrogatory responses of 39 plaintiffs, the timesheets of 15 representative employees that logged the location of time punches, the payroll files for all employees and the deposition testimony of at least all four named plaintiffs and nine opt-in plaintiffs, would allow a reasonable jury to conclude that plaintiffs satisfied their burden of showing the amount and extent of uncompensated work as a matter of just and reasonable inference); *Kubel v. Black & Decker Inc.*, 643 F.3d 353, 365 (2d Cir. 2011) (the *Anderson* test only addresses whether there is a reasonable basis for calculating damages assuming a violation has been shown); *Secretary of Labor v. DeSisto*, 929 F.2d 789, 796 (1st Cir. 1991) (reasoning that witness limitation constituted an abuse of discretion and remanding for new trial).

Based on the summary judgment record, the Superior Court appropriately held that Teruel's estimation of commissions on Coastline Homes of Oxford projects based on the average commissions for select *Schiavi Custom Builders* projects that were profitable, which are not even cited accurately, is not prima facie evidence of breach of contract by Schiavi or damages with respect to Coastline Homes of Oxford projects. App. at 16; *Toto v. Knowles*, 2021 ME 51, ¶ 11, 261 A.3d 233 (evidence submitted in opposition to summary judgment must be sufficient to allow a fact-finder to make a factual determination without speculating); *see Me. Energy Recovery Co. v. United Steel Structures, Inc.*, 1999 ME 31, ¶ 7, 724 A.2d 1248 (to obtain relief for breach of contract, plaintiff must demonstrate that the defendant breached a material term of the contract and that the breach caused damages).

As with respect to the Schiavi Custom Builders projects, Teruel has failed to set forth a prima facie case for breach of contract or unpaid wages pursuant to 26 M.R.S.A. § 626 with respect to any Coastline Homes of Oxford project, and accordingly, Schiavi is entitled to summary judgment.

CONCLUSION

For the reasons set forth above, Defendant-Appellee Schiavi Homes LLC respectfully requests that the Court affirm the Superior Court's November 21, 2025 Order granting summary judgment in favor of Defendant on all claims in its entirety.

Dated at Portland, Maine this 28th day of April, 2026.

/s/ Brooke K. Haley

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CERTIFICATE OF SERVICE

I, Brooke K. Haley, Attorney for Appellee in the above matter, hereby certify that I have forwarded on this same date by mailing with postage prepaid two (2) copies to the attorney for Appellant addressed as follows:

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