

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

3990 Old Town Avenue, Suite C204

San Diego, CA 92110

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

3990 Old Town Avenue, Suite C204

San Diego, CA 92110

Telephone: (619) 255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff ELIAS KASER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

ELIAS KASER, an individual, in his
representative capacity on behalf of the State
of California and fellow Aggrieved
Employees,

Plaintiffs,

vs.

AVIATION CONSULTANTS, INC. a
California Corporation; ACI JET ORANGE
COUNTY, LLC, a Limited Liability Company;
ACI JET SLO COUNTY, LLC, a Limited
Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No: 30-2021-01191204-CU-OE-CXC

**DECLARATION OF SHANI O. ZAKAY
IN SUPPORT OF MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Hearing Date: September 16, 2021

Hearing Time: 2:00 p.m.

Dept.: CX102

Judge: Peter J. Wilson

Action Filed: March 23, 2021

I, SHANI O. ZAKAY, declare as follows:

1. I am the managing partner of the law firm of Zakay Law Group, APC, co-lead
counsel of record for Plaintiff Elias Kaser ("Plaintiff") in this matter. As such, I am fully familiar
with the facts, pleadings and history of the matter. The following facts are within my own

1 personal knowledge, and if called as a witness, I could testify competently to the matters stated
2 herein.

3 2. This declaration is being submitted in support of the motion by Plaintiff for an
4 order: approving the settlement in this Private Attorneys General Act (“PAGA”) action with
5 Defendant Aviation Consultants, Inc. (“Defendant”).

6 3. A true and correct copy of the fully executed Private Attorney General Act (Labor
7 Code Section 2698 *Et Seq.*) Settlement Agreement and Limited Release (“Settlement
8 Agreement”) is attached as Exhibit #1. A proposed order approving the PAGA settlement is
9 submitted herewith.

10 4. On July 31, 2020, Plaintiff Elias Kaser on behalf of himself and on behalf of
11 similarly situated aggrieved employees submitted a notice and draft complaint to the LWDA
12 memorializing claims against Defendant for alleged violations of the California Labor Code,
13 including causes of action for failure to pay minimum wages in violation of Labor Code sections
14 1194, 1197, and 1197.1; failure to pay overtime wages in violation of Labor Code section 510;
15 failure to provide required meal periods in violation of Labor Code sections 226.7 and 512; failure
16 to provide required rest periods in violation of Labor Code sections 226.7 and 512; failure to
17 provide accurate itemized wage statements in violation of Labor Code section 226; failure to
18 provide wages when due in violation of Labor Code sections 201, 202, and 203; violation of
19 Labor Code section 1198 related to failure to provide adequate seating; and violation of the
20 California Labor Code Private Attorneys General Act of 2004 (Labor Code section 2698, *et seq.*),
21 LWDA Case No. 800909-20. On October 12, 2020, Plaintiff and Defendant entered into a Statute
22 of Limitations Tolling Agreement, which tolled Plaintiff’s statute of limitations on Plaintiff’s
23 individual, class and representative PAGA claims against Defendant from October 5, 2020 to
24 April 23, 2021. On March 17, 2021, Plaintiff submitted a second notice to the LWDA
25 memorializing additional wage and hour claims against Defendant for alleged violations of the
26 California Labor Code. On March 23, 2021, Plaintiff filed the instant Action, alleging a single
27 cause of action for violations of PAGA based on the above alleged Labor Code violations.
28

1 5. Plaintiff and Defendant agreed to mediate the action with Steven Rottman, Esq., an
2 experienced and reputable wage and hour and PAGA actions mediator. Prior to the mediation, in
3 order to evaluate the potential value of the claims, the Parties engaged in significant efforts to
4 obtain the facts regarding the claims asserted, including all of Defendant’s relevant wage and hour
5 policies, the exchange of detailed statistical data regarding shifts worked by Plaintiff and the
6 Aggrieved Employees, the production of hundreds of pages of documents, including a large
7 sample of payroll records and time records, and the exchange of detailed briefing and analysis in
8 connection with the mediation. Thereafter, on March 23, 2021, the Parties engaged in a full-day
9 mediation with Mediator Steven Rottman. At the conclusion of the full-day mediation, the Parties
10 reached a settlement based on a mediator proposal, which led to the signing of a Memorandum of
11 Understanding memorializing the settlement.¹ The settlement was negotiated in light of all known
12 facts and circumstances and the uncertainty associated with litigation – including the risk of
13 Plaintiff not being able to maintain representative claims, the difficulty of proving Plaintiff’s
14 claims in a manageable trial, the merits of Defendant’s potential defenses, Defendant’s financial
15 hardship resulting from the effects of COVID-19², and the significant delay and potential
16 appellate issues inherent to litigation – and was reached after extensive arm’s length negotiations
17 over several months, with the assistance of Mediator Steven Rottman.

18 6. The PAGA settlement is subject to Court approval consistent with Labor Code §
19 2699(1)(2) (Settlement Agreement at §5.02). The Settlement Agreement negotiated by the Parties
20 provides for a “Gross Settlement Amount” payment in the amount of \$238,000 to resolve the
21 PAGA Claim (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of
22 \$238,000, there is a deduction of attorneys’ fees in the amount of \$79,333 (which is one-third of
23 the PAGA Settlement), reimbursement of incurred costs in an amount not to exceed \$22,000, and
24 Settlement Administration Costs, which will not exceed \$3,495. (Settlement Agreement at § 5.01-

25
26 ¹ As part of the settlement and in addition to the Gross Settlement Amount, Defendant has agreed
27 to separately settle Plaintiff’s individual claims which is set forth in a separate Individual
Settlement Agreement. The Individual Settlement Agreement is confidential, but can be made
available to the Court for in-camera review upon request.

28 ² Defendant is a service provider for the airline industry, which has been negatively impacted by
the COVID-19 pandemic.

1 5.04).³ After these deductions, the amount remaining is the “PAGA Payment”, which is estimated
2 to be \$133,172. Of the PAGA Payment amount, seventy-five percent (75%) will be paid to the
3 LWDA and the remaining twenty-five percent (25%) will be paid to the PAGA Settlement
4 Members (Settlement Agreement at 5.04).⁴ This 75/25 allocation is required by Labor Code
5 §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

6 7. PAGA Settlement Members will be issued Form 1099 for their share of the PAGA
7 payments. (Settlement Agreement at 5.04.) The Individual PAGA Payment for each Aggrieved
8 Employee shall be based on the number of biweekly payroll periods each Aggrieved Employee
9 worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved
10 Employees during the PAGA Period. (*Id.*) The PAGA Period is the time period from July 31,
11 2019 through the date the Court grants approval of the PAGA Settlement. (Settlement Agreement
12 at § 1.01(xvii)). During mediation, Defendant represented to Plaintiff’s Counsel the number of
13 pay periods and Aggrieved Employees. Defendant represented that there are approximately 214
14 Aggrieved Employees who worked approximately 6,000 pay periods during the PAGA Period.
15 (Settlement Agreement at § 6.02). The PAGA settlement releases the “Released Claims” as
16 follows: Upon entry of Judgment and funding in full of the Settlement by Defendant, the Released
17 Parties shall be entitled to a release from the State of California and Plaintiff as to the following
18 claims: All claims, rights, demands, liabilities and causes of action for civil penalties under the
19 PAGA that arose during the PAGA Period, that were alleged in the Action, including but not
20 limited to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all
21 overtime and/or double time wages owed; (c) failure to pay all overtime and/or double time at the
22 correct rate(s) of pay due to bonus payments, incentive compensation, or otherwise; (d) failure to

23 ³ In the event the Court approves less than One-Third of the PAGA Settlement Amount in
24 Attorneys’ Fees or less than \$22,000 in Attorneys’ Expenses to Plaintiff’s Counsel, the unawarded
25 difference will be added to the PAGA Payment and not to Plaintiff’s Counsel or Defendant
26 (Settlement Agreement at 5.02). In the event the Court approves less than \$3,495 to administer the
27 settlement or if the actual cost to administer the settlement is less than \$3,495, the difference will
28 be added to the PAGA Payment. (*Id.* at 5.03).

⁴ “PAGA Settlement Member” means all individuals who are or previously were employed by
Defendant in California who were classified as hourly, piece-rate, and/or commissioned
employees during the time period April 6, 2019 to December 18, 2020. (Settlement Agreement at
§ 1.01(xvii)).

1 provide compliant meal periods, or premium pay for non-compliant meal periods; (e) failure to
2 authorize and permit compliant rest periods, or premium pay for non-compliant rest periods; (f)
3 failure to provide accurate, itemized wage statements; (g) failure to timely pay wages during
4 employment and/or upon separation of employment; (h) failure to provide adequate seating; (i) all
5 claims for PAGA penalties that could have been premised on the facts, claims, causes of action or
6 legal theories described above; and (j) all other claims under PAGA that could have been
7 premised on the facts, claims, causes of action or legal theories described above and in the
8 complaint, including but not limited to California Labor Code sections 201, 201.3, 202, 203, 204,
9 210, 226, 226.3, 226.7, 218.5, 218.6, 510, 513, 558, 1174, 1174.5, 1182.12-1198 *et seq.*, 1194,
10 1197, 2698, and 2699. (“Released Claims”) (Settlement Agreement at §1.01(xxiii)). This PAGA
11 Released Claims in the Settlement Agreement excludes all PAGA claims outside the PAGA
12 Period, all PAGA claims not alleged in the operative complaint or LWDA Notice, and all non-
13 PAGA claims. (*Id.*) The Settlement Agreement does not release any individual claims of any
14 individuals other than Plaintiff. (*Id.*).

15 8. Notice will be provided to the Aggrieved Employees in the following manner:
16 Defendant will provide the necessary information about the Aggrieved Employees to the
17 Settlement Administrator (ILYM Group) within ten (10) business days of the approval of the
18 PAGA settlement by the Court. (Settlement Agreement at §6.04(b)). Within twenty-one (21) days
19 after receipt of the PAGA Settlement Amount from Defendant, the Settlement Administrator will
20 issue to each Aggrieved Employee a check for their Individual PAGA Payment at their last known
21 home address along with notice which has been mutually approved by the parties. (Settlement
22 Agreement at § 6.04(c)). Checks will remain negotiable for one hundred eighty (180) days. (*Id.* at
23 § 6.04(d)). Any checks returned as non-deliverable on or before the check cashing deadline will
24 be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. (*Id.*)
25 If no forwarding address is provided, the Settlement Administrator will promptly attempt to
26 determine the correct address using a skip-trace, or other search using the name, address, Social
27 Security number, phone number, credit reporting and social media of the Aggrieved Employee
28 involved and will then perform a re-mailing. (*Id.*) If the check remains uncashed by the expiration

1 of the 180-day period, the funds from such uncashed checks will be paid by *cy pres* consistent
2 with California Code of Civil Procedure § 384 to the Capital Pro Bono, Inc. and the Workers'
3 Rights Employment Law Clinic (50/50), subject to Court approval, and the Aggrieved Employees
4 shall remain bound by the Settlement. (*Id.*; Settlement Agreement at § 5.05). Pursuant to
5 California Code of Civil Procedure § 384.4, the attorneys who signed the Settlement Agreement
6 hereby notify the Court that they and their respective firms have no relationship with or
7 connection to the Cy Pres recipients that could create an appearance of impropriety. (*Id.*) The
8 Individual PAGA Payments are 100% penalties and shall be reported using IRS tax form 1099.
9 (Settlement Agreement § 6.04(b)).

10 9. Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of
11 the Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant
12 motion for settlement approval as set forth in the accompanying proof of service in compliance
13 with Labor Code section 2699(1). In addition, Plaintiff shall submit to the LWDA a copy of the
14 Court's judgment and order approving the Settlement Agreement within ten (10) days after entry
15 of judgment or order.

16 10. The additional amounts to be paid from the Settlement Sum other than the Net
17 PAGA Payment are as follows: (1) \$79,333.33 shall be paid to Plaintiff's Counsel for payment of
18 attorneys' fees, and up to \$22,000 shall be paid to Plaintiff's Counsel for litigation expenses as set
19 forth in the client's billing statement (pursuant to Declaration(s) by Plaintiff's Counsel) in
20 prosecuting the PAGA claims (Settlement Agreement at §5.02); and (2) a Settlement
21 Administrator Fee in an amount not to exceed \$3,495. Any difference from these maximum
22 amounts will be added to the PAGA Fund.⁵

23 11. As experienced counsel, I believe that the PAGA Payment is fair and reasonable
24 and therefore should be approved. Here, the PAGA Settlement Amount of \$238,000 is
25 significantly more and constitutes almost \$40 per pay period. The Settlement Sum compares
26

27 ⁵ Plaintiff has entered into a separate confidential settlement agreement with Defendant in regards
28 to the settlement of his individual claims which provides for payment to him in exchange for a
general release of all claims.

favorably to the estimated amount of PAGA penalties based on the violations alleged in Plaintiff's complaint. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory PAGA civil penalties was potentially \$10,124,700 based on 6,363 pay periods at issue as of the mediation date. Importantly, however, these calculations were performed at the maximum statutory rates for the PAGA penalties, when in fact, it is likely that any penalties awarded would be at a lower rate. The PAGA penalties are broken down as follows:

PAGA Penalties		
Number of Pay Periods in PAGA Date Range	6,363	
Number of Pay Periods in PAGA Date Range - Overtime/Regular Rate of Pay	617	9.7%
Number of Pay Periods in PAGA Date Range - Reporting Time (On Call)	331	5.2%
Number of Pay Periods in PAGA Date Range - Rest Breaks	6,356	99.9%
Number of Pay Periods in PAGA Date Range - Net Meal Breaks	1,649	25.9%
Number of Pay Periods in PAGA Date Range - Assumed Meal Breaks	6,334	99.5%
PAGA for Overtime (estimated 107 employees from 7/31/19 to 3/23/21)	\$112,700	\$100/\$200
PAGA for Reporting Time (estimated 31 employees from 7/31/19 to 3/23/21)	\$63,100	\$100/\$200
Max PAGA for Rest Breaks (based on 214 employees from 7/31/19 to 3/23/21)	\$1,249,800	\$100/\$200
PAGA for Net Meal Breaks (estimated 148 employees from 7/31/19 to 3/23/21)	\$315,000	\$100/\$200
Max PAGA for Meal Breaks (based on 214 employees from 7/31/19 to 3/23/21)	\$1,245,400	\$100/\$200
Max PAGA for Wage Statements (based on 214 employees from 7/31/19 to 3/23/21)	\$6,202,500	\$250/\$1,000
Max PAGA for Suitable Seating (based on 214 employees from 7/31/19 to 3/23/21)	\$1,251,200	\$100/\$200
TOTAL DAMAGES		
Total PAGA Penalties	\$10,124,700	

12. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory." Before and during the mediation, Defendant argued, among other things, that it was unlikely that any Judge would award more than the actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff's calculation even if Plaintiff prevailed on the PAGA claim. Here, multiplying the number of violations identified, assumed, and extrapolated by Plaintiff's expert (24,948 violations) by \$5 results in a total potential liability of **\$124,740**. Further, multiplying the number

1 of pay periods (6,000⁶) by \$5 results in a total potential liability of \$30,000. Therefore, even
2 assuming Plaintiff would have prevailed in trial, the result obtained by Plaintiff in the Settlement
3 exceeds the amount Plaintiff would have recovered had the Court relied on *Carrington* in
4 awarding the PAGA penalties.

5 13. The two primary claims in this PAGA action are based on (1) Defendant's failure
6 to provide complaint meal breaks to the PAGA Settlement Members when a break was missed,
7 short or late, and (2) Defendant's failure to provide complaint rest breaks to the PAGA Settlement
8 Members when a break was missed, short or late.

9 14. Here, a number of defenses asserted by Defendant presented serious threats to the
10 claims of the Plaintiff and the PAGA Settlement Members. Defendant asserted that the
11 employment practices complied with all applicable Labor Laws.

12 15. Most importantly and relevant to this case, Defendant argued that the Supreme
13 Court decision in *Brinker v. Superior Court*, 53 Cal.4th 1004 (2012), weakened, if not eliminated,
14 Plaintiff's claims, on liability, value, and discretion with respect to the PAGA penalties, as to the
15 meal and rest period claims. A major component of the penalties alleged to have been owed by
16 Defendant are attributed to non-compliant meal and rest breaks. Before and during the mediation,
17 Defendant aggressively argued that Defendant's policies and culture afforded the Aggrieved
18 Employees an opportunity to take timely meal and rest breaks, and that employees like Plaintiff
19 chose not to take compliant breaks. Specifically, Defendant's written policies encouraged
20 Aggrieved Employees to take meal periods and rest breaks according to schedules compliant with
21 the California Labor Code. The policy further required employees who felt they were not
22 provided an opportunity to take a meal or a rest break to notify and provide an explanation to their
23 manager no later than the next day. Defendant argued, therefore, that under the *Brinker* decision it
24 has no liability for the missed breaks whatsoever. Defendant argued that it adopted and strictly
25 enforced lawful policies and afforded Plaintiff and the Aggrieved Employees compliant meal and
26 rest breaks. Because Plaintiff's claims were largely based on the missed meal and rest breaks, and

27 ⁶ Plaintiff's exposure analysis at mediation was based on an extrapolated number of 6,363 pay
28 periods. However, at the mediation Defendant confirmed that only approximately 6,000 PAGA
periods were at issue.

1 because Defendant's policies were, indeed, compliant, this presented a very real concern for
2 Plaintiff. If successful, this defense could eliminate or substantially reduce any recovery under
3 PAGA. While Plaintiff believes that this defense, and others, could be overcome, Defendant
4 maintains these defenses have merit and therefore present a serious risk to recovery of penalties.

5 16. Accordingly, Defendant disputes and denies Plaintiff's allegations and claims
6 asserted in the operative complaint which are resolved by the Settlement Agreement. Defendant
7 asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount
8 of the penalties. Defendant could argue that no penalties prior to the PAGA notification should be
9 awarded because the violations were not intentional, and at least one court has so ruled. These
10 defenses present a risk to the PAGA claim and the potential that some or all of the PAGA
11 penalties sought may not be awarded.

12 17. Given Defendant's potential defenses to the violations at issue, the risks and costs
13 of continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and
14 reasonable. Plaintiff's Counsel have significant experience litigating wage and hour claims
15 including claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than
16 similar settlements that courts have approved. The PAGA Settlement, along with the other terms
17 of the proposed settlement, were negotiated by experienced counsel at arm's length with the
18 assistance of an experienced and reputable mediator, Steven Rottman.

19 18. As set forth in the accompanying proof of service, the LWDA has been provided
20 notice of this motion and the PAGA settlement. The decision of the LWDA to accept the PAGA
21 Settlement and not oppose the motion should be given considerable weight. This is not a situation
22 where the Court needs to be concerned about the rights of absent employees as in a class
23 settlement, as this PAGA-only settlement does not release the individual claims of absent
24 employees, and the LWDA is a sophisticated government entity that is more than able to look out
25 for its own rights.

26 19. The payment of attorneys' fees and costs to Plaintiff's Counsel under the
27 Agreement is supported by several factors. First, the requested fees are justified by the result
28 achieved. PAGA Counsel's diligent and efficient litigation of this action resulted in the creation of

1 an ascertainable common fund of \$238,000.00 that will substantially benefit the state of California
2 and the PAGA Settlement Members. PAGA Counsel seek approval of an award of attorneys' fees
3 in the amount of \$79,333.33 representing 1/3 of the common fund. PAGA Counsel have also each
4 provided information about the tasks that the two law firms performed on this case. PAGA
5 Counsel's request for attorneys' fees in the amount of 1/3 of the monetary common fund is
6 consistent with the amount awarded in other cases. Under *Laffitte v. Robert Half Int'l Inc.*, 1
7 Cal.5th 480, 504, (2016), the Court need not undertake any lodestar cross-check where, as here,
8 the percentage of the common fund sought equates to 1/3 of the common fund obtained. Second,
9 the fee award is justified by the work performed. Here, the fee award represents Plaintiff's
10 Counsels' current combined lodestar of \$77,345 with a multiplier of 1.02 with additional work to
11 be performed such that the multiplier will ultimately be even lower

12 20. Under the Settlement Agreement, Plaintiff's Counsel will be recovering litigation
13 expenses in the total amount of \$11,909.09 which is less than the \$22,000 allocation for costs in
14 the Settlement Agreement, so the difference of \$10,090.91 will be added to the PAGA Payment
15 amount. The litigation expenses incurred by Zakay Law Group, APC and JCL Law Firm, APC
16 were in the amount of \$11,909.09, were all reasonably necessary to the litigation, and are detailed
17 in Exhibit #2 attached hereto for the Zakay Law Group and the accompanying Declaration of
18 Jean-Claude Lapuyade, Esq. for the JCL Law Firm.

19 21. As detailed in the accompanying billing statements in Exhibit #2 attached hereto
20 for the Zakay Law Group and the accompanying Declaration of Jean-Claude Lapuyade, Esq. for
21 the JCL Law Firm Zakay Law Group, APC and JCL Law Firm, APC's current lodestar is \$77,345
22 for more than 161 hours of work. The firms have worked on this action for over 7 months. In
23 addition, there will be additional lodestar still to be incurred to complete the settlement.

24 Experience and Qualifications

25 22. I have represented thousands of employees in a variety of legal matters, including
26 PAGA lawsuits, class actions and complex litigation cases. Zakay Law Group APC's practice is
27 devoted almost entirely to the prosecution of wage and hour class action and PAGA action
28 matters. I have successfully prosecuted and obtained significant recoveries in numerous class

1 action lawsuits and other lawsuits involving complex issues of law and fact. A true and correct
2 copy of the resume of Zakay Law Group, APC is attached hereto as Exhibit #3.

3 23. My credentials are reflected in the Zakay Law Group, APC firm resume, a true
4 and correct copy of which is attached hereto as Exhibit #3. Some of the major cases my firm has
5 undertaken are also set forth in Exhibit #3. I have had extensive representative and class litigation
6 experience, much of it in the area of representative PAGA actions, employment class actions,
7 unfair business practices and other complex litigation. I have litigated similar wage and hour class
8 action cases against other employers on behalf of employees. It is this level of experience which
9 enabled the firm to undertake the instant matter and to successfully combat the resources of the
10 defendant and its capable and experienced counsel. On account of the concerted and dedicated
11 effort this case required in order to properly handle and prosecute, I was precluded from taking
12 other cases, and in fact, had to turn away other potential fee generating cases.

13 24. My hourly rate for this case is \$550 per hour. My rate is in line with the prevailing
14 rates of attorneys in the local legal community for similar work and, if this were a commercial
15 matter, these are the charges that would be made and presented to the client. The rates charged by
16 my firm are in line with the prevailing rates of attorneys in the local legal community for similar
17 work and, if this were a commercial matter, these are the charges that would be made and
18 presented to the client. These hourly rates have been approved by Court's throughout California,
19 including the Courts in the Superior Court of California. Finally, the reasonableness of my hourly
20 rates is further confirmed by comparing this rate with the rates of comparable counsel practicing
21 complex and class litigation as detailed in the National Law Journal Billing Survey. See e.g. *Zest*
22 *IP Holdings, LLC v. Implant Direct MFG., LLC*, 2014 U.S. Dist. LEXIS 167563 (S.D. Cal. 2014)
23 (finding that "Mayer Brown's \$775 average billing rate for partners" and "Mayer Brown's \$543
24 average associate billing rate" are reasonable rates when compared within 21 other firms
25 practicing in the Southern District of California.) This survey is useful to show that Class
26 Counsel's rates are in line with the comparable rates of the defense counsel that opposes these
27 types of class claims, such as Mayer Brown. In another example, Sheppard Mullin Richter &
28 Hampton, who is opposing counsel in many cases prosecuted by Class Counsel charges rates as

1 high as \$875 for partners and \$535 for associates. Similarly, Paul Hastings, another opposing
2 counsel in these types of cases, charges between \$900 and \$750 for partners and \$755 and \$335
3 for associates. Thus, the rates charged by Plaintiff's Counsel for comparable work are less than
4 these examples, and are therefore undoubtedly reasonable.

5 Additional Issues

6 25. **National Change of Address** – The Settlement Administrator is required to
7 perform a National Change of Address search on any check returned by the U.S. Postal Service as
8 non-deliverable, and re-mail the check to the Aggrieved Employee's new address under paragraph
9 5.03(a)(2) of the Settlement Agreement.

10 26. **Information Received** – In this case, Plaintiff received all of the information
11 needed to evaluate the claims being settled. The following is a summary of the relevant
12 documents received, reviewed and analyzed by Plaintiff in order to evaluate the claims:

- 13 a. Significant sample data showing the employees, their employment dates, their
14 time sheets, hourly rates, and their wages.
- 15 b. Significant sample data concerning recorded meal periods.
- 16 c. Defendant's Employee Handbook for the relevant time period, which outlined
17 the wage and hour policies of Defendant.
- 18 d. Employee file of Plaintiff.
- 19 e. Samples of wage statements provided by Defendant to employees.
- 20 f. Significant sample payroll data.
- 21 g. Hiring and termination forms used by Defendant for employees.

22 27. **PAGA Penalties Valuation.** PAGA penalty calculations are highly variable.
23 Plaintiff's Counsel is unaware of any PAGA judgment in which substantial PAGA penalties were
24 awarded at the full statutory rate, rather, the PAGA judgments have typically decreased the
25 amount of the per violation penalty to a fraction of the statutory amount. Here, some of the
26 PAGA penalty amounts were likely not awardable at the maximum rate given the defenses
27 presented by Defendant. In addition to the defenses presented by Defendant, as detailed above,
28 there is another basis for concluding that the settlement in this case is reasonable even with PAGA

1 penalties in this amount. Specifically, PAGA penalty claims are routinely settled at a small
2 fraction of the potential penalties. For example, Judge Nelson in *Price v. Uber Technologies*,
3 (Los Angeles Superior Court case no. BC554512), recently approved a PAGA settlement of \$7.75
4 million for 1.5 million drivers where the maximum PAGA liability was \$151 billion. Thus, the
5 PAGA penalties were settled for 0.005% of the PAGA liability. Notably, this was the largest
6 PAGA settlement in the 15-year history of PAGA. So while PAGA penalty figures may be
7 inflated to significant numbers, realistic settlements of PAGA claims result in a settlement amount
8 of less than 1% of the PAGA liability. Here, the settlement represents more than 2.3% of the
9 maximum PAGA liability.

10 28. **Scope of the Release.** The release is limited to PAGA penalties predicated on the
11 claims actually asserted in the operative complaint and/or in the notice to the LWDA. A copy of
12 the notice to the LWDA is attached hereto as Exhibit #4.

13 29. **Compliance with Labor Code §§2689.** Plaintiff complied with all of the
14 procedural requirements of Labor Code §§2689 as follows:

- 15 a. On July 31, 2020 Plaintiff gave written notice to the LWDA of her intent to
16 assert a claim under PAGA and her alleged basis for the claim. (See Exhibit 4).
- 17 b. At the time the notice to the LWDA was filed, Plaintiff also submitted the \$75
18 filing fee to the LWDA. (See Exhibit 5).
- 19 c. On March 23, 2021 Plaintiff filed a Complaint against Defendant in the
20 Superior Court of the State of California, County of Orange. The Complaint
21 alleged a single claim for: (1) Violation of the Private Attorneys General Act
22 California Labor Code §§2689 et seq. (“PAGA”). On June 17, 2021, a copy of
23 the filed-stamped complaint was submitted to the LWDA. (See Exhibit 6).
- 24 d. On August 13, 2021, the LWDA has been provided notice of this motion and
25 the PAGA settlement. (See Exhibit 7).

26
27 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed this 13th day of August 2021, at San Diego, California.

3
4 By: _____
5 Shani O. Zakay
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

**PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE SECTION 2698 ET SEQ.)
SETTLEMENT AGREEMENT AND LIMITED RELEASE**

Elias Kaser, et al. v. Aviation Consultants, Inc.
(Orange County Superior Court, Case Number 30-2021-01191204-CU-OE-CXC)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Private Attorneys General Act (Labor Code section 2698 *et seq.*) (“PAGA”) Settlement Agreement and Limited Release (“Agreement”).

This Agreement is made by and between Plaintiff Elias Kaser (“Plaintiff”), for himself and in his capacity as a representative of the State of California on behalf of other aggrieved employees, and Defendant Aviation Consultants, Inc., (“Defendant”). This Agreement shall be effective upon the last date upon which it is signed by the Parties.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by this Agreement, which is intended to effect and complete settlement of this matter.

Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- i. “Action” shall mean the civil action entitled *Elias Kaser v. Aviation Consultants, Inc., et al.*, filed in the Superior Court for the County of Orange on or about March 23, 2021, designated as Case No. 30-2021-01191204-CU-OE-CXC.
- ii. “Agreement,” or “Settlement Agreement,” means this Private Attorneys General Act (Labor Code section 2698 *et seq.*) Settlement Agreement and Limited Release.
- iii. “Aggrieved Employee(s)” means all current and former hourly or non-exempt employees that worked for Aviation Consultants, Inc. in the State of California at any time during the PAGA Period as defined below.
- iv. “Complaint” means Plaintiff’s Complaint filed in Orange County Superior Court on March 23, 2020, which is the operative Complaint in this Action.
- v. “Court” means the Superior Court for the State of California, County of Orange.
- vi. “Defendant” means Aviation Consultants, Inc.

vii. “Defendant’s Counsel” or “Counsel for Defendant” is:

Collin D. Cook
Kevin L. Quan
Fisher & Phillips LLP
2050 Main Street, Suite 1000
Irvine, CA 92614

- viii. “Effective Date” shall mean the earliest date, following entry by the Court of the Judgment, upon which one of the following has occurred: (i) expiration of all potential appeal periods without a filing of a notice of appeal of the Judgment; (ii) final affirmance of the Judgment by an appellate court as a result of any appeal(s); (iii) final dismissal or denial of all such appeals (including any petitions for review, rehearing or certiorari) such that the Judgment is no longer subject to further judicial review.
- ix. “Fee Amount” is the amount in fees Plaintiff’s Counsel is free to request that the Court award them up to thirty-three and one-third percent (33 1/3%) of the PAGA Settlement Amount, per Section 4.01 as compensation for their attorneys’ fees.
- x. “Cost Amount” is the total amount of litigation costs incurred by Plaintiff’s counsel in connection with the Action, including filing fees, mediation expenses and fees, travel and hotel costs, etc., up to a maximum of \$22,000 which shall be paid from the PAGA Settlement Amount as reimbursement of litigation costs.
- xi. “Individual PAGA Payment” is the amount in Labor Code section 2699 penalties to be paid to Aggrieved Employees, which will be 25% of the Net PAGA Payment, unless the Court determines otherwise.
- xii. “LWDA” refers to the California Labor & Workforce Development Agency.
- xiii. “LWDA Payment” means the 75% share of the Net PAGA Payment paid to the LWDA pursuant to Labor Code Section 2699(i).
- xiv. “Net PAGA Payment” means the portion of the Settlement Sum available for distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after deduction of the Settlement Administration Fee, Plaintiff’s Counsel’s Fee Amount and Plaintiff’s Counsels’ Cost Amount.
- xv. “Notice of PAGA Settlement” means the Notice of PAGA Settlement (attached hereto as Exhibit A) the Settlement Administrator shall mail, along with each Individual PAGA Payment, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and return all undeliverable Notices to the Settlement Administrator.
- xvi. “PAGA” refers to the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*

- xvii. “PAGA Period” means the time period from July 31, 2019 through the date the Court grants approval of the PAGA Settlement and resolves any and all claims relating to the facts and claims asserted in the Action or any other claims, under PAGA, based on the facts alleged in the LWDA letter and the Complaint.
- xviii. “Parties” refers to Plaintiff and Defendant.
- xix. “Qualifying Pay Period” means pay periods worked by Aggrieved Employees during the PAGA Period. The calculation of an Aggrieved Employees’ pay periods and a determination as to whether an Aggrieved Employee was actively employed in California in a particular pay period shall be construed from Defendant’s records.
- xx. “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain the property of Defendant until the payments required under the Agreement are made.
- xxi. “Plaintiff” refers to Elias Kaser individually and in his capacity as a representative of the State of California on behalf of other aggrieved employees.
- xxii. “Plaintiff’s Counsel” are as follows:

Jean-Claude Lapuyade
JCL LAW FIRM, APC
3990 Old Town Ave., Suite C204
San Diego, CA 92110

Shani O. Zakay
ZAKAY LAW GROUP APLC
3990 Old Town Ave., Suite C204
San Diego, CA 92110

- xxiii. “Released Claims” means: All claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA that arose during the PAGA Period, that were alleged in the Action, including but not limited to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime and/or double time wages owed; (c) failure to pay all overtime and/or double time at the correct rate(s) of pay due to bonus payments, incentive compensation, or otherwise; (d) failure to provide compliant meal periods, or premium pay for non-compliant meal periods; (e) failure to authorize and permit compliant rest periods, or premium pay for non-compliant rest periods; (f) failure to provide accurate, itemized wage statements; (g) failure to timely pay wages during employment and/or upon separation of employment; (h) failure to provide adequate seating; (i) all claims for PAGA penalties that could have been premised on the facts, claims, causes of action or legal theories described above; and (j) all other claims under PAGA that could have been premised on the facts, claims, causes of action or legal theories described above and in the complaint, including but not limited to California Labor Code

sections 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 218.5, 218.6, 510, 513, 558, 1174, 1174.5, 1182.12-1198 *et seq.*, 1194, 1197, 2698, and 2699.

- xxiv. “Released Parties” means Aviation Consultants, Inc., ACI Jet Orange County, LLC and ACI Jet SLO County, LLC, and any of their former, present and future owners, parents, affiliates, and subsidiaries, and all of their current, former and future officers, directors, members, managers, partners, shareholders, employees, joint ventures, successors, assigns, accountants, insurers, or legal representatives who are jointly and severally liable under this Agreement.
- xxv. “Claim Amount” means an individual Aggrieved Employees’ allocation of the Net PAGA Payment.
- xxvi. “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party professional administrator, jointly selected by the Parties and/or appointed by the Court to administer the Agreement.
- xxvii. “Settlement Administration Fee” means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Aggrieved Employees; all costs and fees associated with communicating with Aggrieved Employees, Plaintiff’s Counsel, and Defendant’s Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement. Based on the information presently and reasonably available, the Parties stipulate that Settlement Administration Fees shall be up to \$15,000. Should any actual Settlement Administration Fees turn out to be less than the projected amount, the Parties agree that the savings will be allocated to the Net PAGA Payment, to be distributed to the Aggrieved Employees in proportion to their respective number of Qualifying Pay Periods.
- xxviii. “Final Approval Date” means the date the Court enters a signed order granting approval of the Agreement.
- xxix. “Settlement Sum” means the Two Hundred and Thirty Eight Thousand Dollars (\$238,000.00) Defendant have agreed to pay pursuant to Section 5.01, below.

xxx. "Individual Settlement Payment" means the payment by Defendant to Plaintiff in accordance with the separate individual settlement agreement entered into between the Parties and attached hereto as Exhibit B.

Article II.

Background.

- (a) On July 31, 2020, Plaintiff, on behalf of himself and on behalf of similarly situated aggrieved employees submitted a notice and draft complaint to the LWDA memorializing claims against Defendant for violations of the California Labor Code, including causes of action for failure to pay minimum wages in violation of Labor Code sections 1194, 1197, and 1197.1; failure to pay overtime wages in violation of Labor Code section 510; failure to provide required meal periods in violation of Labor Code section 226.7 and 512; failure to provide required rest periods in violation of Labor Code section 226.7 and 512; failure to provide accurate itemized wage statements in violation of Labor Code section 226; failure to provide wages when due in violation of Labor Code section 201, 202, and 203; violation of Labor Code section 1198 related to failure to provide adequate seating; and violation of the California Labor Code Private Attorneys General Act of 2004 (Labor Code section 2698, *et seq.*), LWDA Case No. 800909-20.
- (b) On October 12, 2020, Plaintiff and Defendant entered into a Statute of Limitations Tolling Agreement, which tolled Plaintiff's statute of limitations on Plaintiff's individual, class and representative PAGA claims against Defendant from October 5, 2020 to April 23, 2021.
- (c) Through informal discovery, Defendant and Defendant's Counsel provided Plaintiff's Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, information on the number of Aggrieved Employees, including, but not limited to, Aggrieved Employees' workweeks, the total number of Aggrieved Employees, and timecard and payroll reports for a randomly selected sample of Aggrieved Employees.
- (d) On December 1, 2020, Plaintiff asserted individual claims against Defendant for wrongful termination in violation of public policy; race and national origin discrimination and disparate treatment; disability discrimination and disparate treatment; failure to engage in the interactive process and to reasonably accommodate; meal and rest period violations; failure to pay for work off the clock; non-compliant wage statements; and waiting time penalties.
- (e) On March 17, 2021, Plaintiff, on behalf of himself and on behalf of similarly situated aggrieved employees submitted a second notice to the LWDA memorializing additional wage and hour claims against Defendant for violations of the California Labor Code.
- (f) On March 23, 2021, Plaintiff filed the Action in the Superior Court of Orange County, Case No. 30-2021-01191204-CU-OE-CXC, alleging a single cause of action for violations of PAGA based on Labor Code violations such as: failure to pay minimum wages; failure to pay overtime wages; failure to provide required meal periods; failure to provide required rest periods; failure to provide accurate itemized wage statements; failure to provide wages

when due; and failure to provide adequate seating [collectively, violations of Labor Code sections including, but not limited to, §§ 201, 202, 203, 223, 226, 226.7, 510, 512, 516, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198 and 2699.].

- (g) On March 23, 2021, the Parties engaged in mediation with Steven Rottman, Esq., an experienced and reputable wage and hour and PAGA actions mediator. At the conclusion of the full day mediation, the Parties reached an agreement for resolution. The Parties' agreement was memorialized in a Memorandum of Understanding (MOU), which this Agreement now replaces. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.
- (h) The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Plaintiff's Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.
- (i) This Agreement contemplates the (a) entry of an order by the Court approving the payment allocated for settlement of the Settlement Sum provided herein; (b) an order entering PAGA Judgment in the Action; and (c) all Parties bearing their respective fees and costs except as expressly provided in this Agreement. These terms are material provisions of this Agreement.

Defendant denies each and every claim and contention alleged in the Action, and have always maintained that they never engaged in any unlawful acts regarding any of the matters alleged in the Action.

Article III.

Non-Admission of Liability

Section 3.01 Based on the factual and legal issues involved, the expense and time necessary to prosecute the Action through trial, the risks, uncertainty and costs of further prosecution, the difficulty of proof necessary to establish manageability for purposes of liability, and the relative benefits to the PAGA Aggrieved Employees of an expeditious resolution to the Action, the Parties have concluded that the terms set forth in this Settlement are fair, reasonable, adequate and in the best interests of the PAGA Aggrieved Employees.

Section 3.02 Defendant has denied and continues to deny all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. It is understood and agreed by the Parties that this is a compromise

and settlement of all disputed claims and that the promises and payment in consideration of this Agreement shall not be construed to be an admission of any liability or obligation whatsoever by Defendant or Released Parties to any other party or to any other person whomsoever. Defendant has agreed to resolve the asserted PAGA claims in the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendant does not waive, and is expressly reserving, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge representative or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

Section 3.03 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement on a conditional basis in order for the Court to evaluate and approve the settlement. If the Court does not enter an order approving the Agreement, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

Article IV.

Scope of the Aggrieved Employees.

Section 4.01 The scope of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Aggrieved Employees as defined in Section 1.01.

Section 4.02 Aggrieved Employees entitled to recover under this Agreement will include only those individuals who are identified in Defendant's records as having worked as an Aggrieved Employee.

Article V.

Terms of Agreement.

Section 5.01 Settlement Sum.

Defendant agrees to pay **Two Hundred Thirty Eight Thousand Dollars And Zero Cents (\$238,000.00)** as a full, complete and final settlement of the Action. This sum includes the following: (i) any payment to the LWDA; (ii) any payment to Aggrieved Employees; (iii) the payment of fees and costs to Plaintiff's counsel, as approved by the Court; and (iv) all fees, costs, and expenses of administration of this Agreement. This sum excludes the Individual Settlement Payment to Plaintiff.

Section 5.02 Fee Amount.

Plaintiff's Counsel will apply to the Court for an award of attorneys' fees not to exceed thirty-three and one-third percent (33 1/3%), of the Settlement Sum, and Plaintiff's Counsel will also seek reimbursement of reasonable litigation costs not to exceed \$22,000 (attorneys' fees and reasonable litigation costs are referred to as "Plaintiff's Counsel Payment"). Defendant will not oppose or object to Plaintiff's Counsel's application for Plaintiff's Counsel Payment. In the event that the Court does not approve an award of attorneys' fees equal to the requested amount, or the Court alters the payment methodology described herein, Plaintiff's Counsel agrees not to seek additional review of the Court's decision regarding attorneys' fees, and this Settlement will be enforceable. Any reduction in this payment by the Court is not grounds to void this Agreement and any funds requested but not awarded as attorneys' fees or costs will be distributed to the LWDA and Aggrieved Employees pursuant to the distribution terms of the Agreement or any terms imposed by the Court. Plaintiff's Counsel Payment shall be allocated between Plaintiff's Counsel as follows: JCL Law Firm, APC's share will be 50%, and Zakay Law Group ALPC's share will be 50%.

Section 5.03 Settlement Administration Fees and Costs.

Settlement administration shall be done by ILYM Group, Inc., a qualified, third-party settlement administrator agreed to by the Parties and approved by the Court ("Settlement Administrator"). The Parties agree that the Settlement Administrative Fee shall be paid from the Settlement Sum. This includes all fees and costs for postage, envelopes, and computer searches to locate addresses; and expenses of the Settlement Administrator to implement and complete the settlement process according to the terms of this Settlement, to calculate payments to individual PAGA Aggrieved Employees, and cost associated with the escheatment process or an any uncashed or undeliverable settlement checks, to prepare any necessary tax documents for PAGA Settlement members, and any other related fees and costs (The "Settlement Administration Fee"). Any reductions by the Court or any unused amount shall revert to the Net PAGA Payment.

The Settlement Administrator shall establish a QSF pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement.

Section 5.04 PAGA Payment - Allocation.

The Net PAGA Payment shall represent Labor Code Section 2699 penalties, of which 75% of the payment will be paid to the LWDA as the LWDA Payment and 25% will be paid to Aggrieved Employees as Individual PAGA Payments, unless the Court determines otherwise. A reallocation of the settlement funds amongst PAGA claims directed by the Court shall not be a basis for either side to void the Agreement. Aggrieved Employees will be issued Form 1099 for their share of the PAGA payments. The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of Qualifying Pay Periods that each Aggrieved Employee worked during the PAGA Period as a percentage of the total Pay Periods worked by all Aggrieved Employees during the PAGA Period.

Section 5.05 Treatment of Residue and Cy Pres. For any portion of the Net Settlement Amount allocated to Aggrieved Employees that was not claimed by Aggrieved Employees by cashing their respective settlement checks before the deadline to do so, that remaining amount shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Workers' Rights Employment Law Clinic. No portion of the Settlement Sum will revert to Defendants for any reason.

Article VI.

Approval and Implementation of Agreement.

Section 6.01 Cooperation.

The Parties will cooperate in obtaining through an unopposed motion, an Order from the Court approving the terms of this Agreement at the earliest possible date. The Parties agree to use their best efforts to expedite the preparation and submission of the Agreement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed in order to obtain approval of this Agreement.

Section 6.02 Court Approval.

The Parties will seek to obtain the Court's approval of this Agreement by way of a motion to be filed by Plaintiff's counsel. At the time of mediation, Defendant provided an estimate to Plaintiff of 214 Aggrieved Employees and 6,000 Qualifying Pay Periods during the PAGA Period. In the event the number of Qualifying Pay Periods during the PAGA Period is more than 6,600 (*i.e.*, greater than 10% more than 6,000), then Defendant shall at its option either (a) increase the Settlement Sum in proportion to the increase in Qualifying Pay Periods or (b) cap the PAGA Period on the date that the 10% is exceeded. The Court's approval of this Agreement shall be embodied in a written Order. Should the Court not grant approval of terms set forth in Section 5.01 of this Agreement, then the entirety of this Agreement shall be null and void.

After approval is granted, Defendant shall pay Plaintiff the Individual Settlement Payment in accordance with the separate individual settlement agreement entered into between the Parties and attached hereto as Exhibit B.

Section 6.03 Notice to Aggrieved Employees.

(a) Notice.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than Ten (10) business days after Effective Date, Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee, the last known home address for each such Aggrieved Employee, each Aggrieved Employee's social security number, and each Aggrieved Employee's respective number of Qualifying Pay Periods employed by Defendant in California during the PAGA Period.

- (2) The Settlement Administrator shall conduct one National Change of Address (“NCOA”) search for all Aggrieved Employees identified on the Aggrieved Employees List. No later than twenty-one (21) business days after its receipt of the information described in Section 6.03(a)(1) above, the Settlement Administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit A) and the Payment as defined below in Section 6.04(b) to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and Individual PAGA Payment and return all undeliverable Notices and Individual PAGA Payments to the Settlement Administrator. For each Notice and Individual PAGA Payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database.
- (3) All costs incurred by the Settlement Administrator in connection with the current settlement, whether foreseen or not, shall be paid out of the Settlement Sum.

Section 6.04 Settlement Payment And Administration Procedures.

(a) Settlement Sum

The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID number and calculate all settlement checks and withholdings required under the law based on the information that will be confidentially furnished by Defendant. There are no payroll deductions to be calculated under this Settlement, since no part of the Settlement will be classified as wages.

(b) Payment of Aggrieved Employee Payment.

Defendant shall provide the Settlement Administrator with a list of the names and addresses of the PAGA Aggrieved Employees, to be furnished within ten (10) business days after the Court issues an Order approving this Settlement. The contact information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the PAGA Aggrieved Employees. This information is to be used only to carry out the Settlement Administrator’s duties as specified in this Agreement. For purposes of distributing each Individual PAGA Payment, all distribution payments will be made according to the number of Qualifying Pay Periods each Aggrieved Employee was employed by Defendant in California during the PAGA Period (partial Qualifying Pay Periods will be counted as full Qualifying Pay Periods), with each Aggrieved Employee being entitled to a share of the Net PAGA Payment allocated to the Aggrieved Employees based upon the Aggrieved Employee’s number of Qualifying Pay Periods employed with Defendant during the specified period as a numerator and the total number of Qualifying Pay Periods all Aggrieved Employees were employed with Defendant in California during the PAGA Period as the denominator. Defendant’s records shall be determinative for purposes of calculating the number of Qualifying Pay Periods worked and any payments to PAGA Aggrieved Employees.

The Individual PAGA Payments are considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 reflecting this portion of the settlement.

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred and eighty (180) calendar days after the date of issuance. After one hundred and eighty (180) calendar days of issuance, the checks shall be voided and funds from all undeposited checks shall be transmitted to the *cy pres* beneficiaries identified in Section 5.05. The Settlement Administrator shall deliver the *cy pres* funds within fourteen (14) calendar days after the check cashing deadline.

(c) Payment Schedule

Defendant shall pay the full Settlement Amount within thirty (30) days of the Effective Date. Payment shall be distributed by the Settlement Administrator at the time the Notice of PAGA Settlement is mailed in accordance with Section 6.03(a). The Settlement Administrator will send the Individual Payment to the PAGA Aggrieved Employees by postmarked First Class U.S. Mail. Payments to the PAGA Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's counsel shall be made by the Settlement Administrator within twenty-one (21) days of Defendant's funding of the Settlement Sum as described in this section.

(d) Uncashed Checks

To provide the best notice and delivery of Individual Payments practicable, any Individual Payment returned to the Settlement Administrator as non-delivered shall be sent by postmarked First Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address is provided for an Individual Payment that is returned as non-deliverable, the Settlement Administrator shall use the best available technology accessible (i.e. skip tracing, address verification, etc.) to the Settlement Administrator or other mutually agreeable method to locate PAGA Aggrieved Employees and will then mail the Individual Payment to the address identified by the best available technology accessible to the Settlement Administrator or other mutually agreeable method. If no current address is located, the Individual Payment for that individual will be deemed undeliverable. If any PAGA Aggrieved Employees cannot be located within two attempts at mailings by the Settlement Administrator, the Individual Payment for that individual will be deemed undeliverable.

The Settlement Administrator shall maintain a list of the postmark date for the original mailing of the Individual Payment to the PAGA Aggrieved Employees, and a list of PAGA Aggrieved Employees who did not receive the Individual Payment due to the inability to locate a valid address using the procedures described herein or who otherwise could not be located within two attempts at mailing.

All settlement checks will remain valid and negotiable for 180 days from the date of their mailing by the Settlement Administrator. After 180 days from the date of their mailing by the Settlement Administrator, any uncashed checks shall be paid to the checks shall be voided and funds from all undeposited checks shall be transmitted to the *cy pres* beneficiaries identified in

Section 5.05. The Settlement Administrator shall deliver the *cy pres* funds within fourteen (14) calendar days after the check cashing deadline.

No later than January 31 of the year following payment of their individual portion of the Settlement Sum, the Settlement Administrator will prepare and issue IRS Form 1099 to PAGA Aggrieved Employees who receive a payment.

Section 6.05 LWDA Notice.

Pursuant to California Labor Code section 2699(l), Plaintiff will provide a copy of this Agreement to the LWDA concurrently with the filing of the motion for settlement approval. Plaintiff will also file a declaration in support of his Motion for Settlement Approval confirming that he has submitted the Agreement to the LWDA in compliance with Labor Code section 2699(l). In addition, Plaintiff shall submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten (10) days after entry of the judgment or order.

Section 6.06 Submission of Notice of Satisfaction of Judgment.

Upon payment of the entire Settlement Sum by Defendant and distribution of the Settlement Sum by the Settlement Administrator in accordance with this Agreement, Plaintiff and Defendant will jointly submit a Notice of Satisfaction of Judgment.

Article VII.

Limitations On Use Of This Agreement.

Section 7.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as an admission by Defendant of any violations of Plaintiff's rights or the rights of any other alleged Aggrieved Employee, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaim any liability to Plaintiff or any other allegedly Aggrieved Employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract.

Section 7.02 Nullification.

- (a) If the Court should for any reason fail to approve this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. Material terms of this Agreement include: the definition of Aggrieved Employees (Section 1.01(iii)); the definition of Effective Date

(Section 1.01(viii)); the definition of PAGA Period (Section 1.01(xvii)); the definition of Released Claims (Section 1.01(xxiii)); the definition of Released Parties (Section 1.01(xxiv)); the definition of Settlement Sum (Section 1.01(xxix)); the requirement for entry of an order by the Court approving this Agreement and entering PAGA Judgment as contemplated in Article II(i). The following terms are not material to this Agreement: the allocation of Fee Amount (Sections 1.01(ix) and 5.02); the amount of the Settlement Administration Fee (Section 1.01(xxvii)); the allocation within the Net PAGA payment (Section 5.04).

Article VIII.

Section 8.01 Limited Release and Wavier of Claims.

It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge disputes and claims alleged in the Action. Upon entry of the Order and Final Judgment approving payment of the PAGA penalties as described in this Agreement, and upon funding in full of the Settlement Sum by Defendant, Plaintiff, the Aggrieved Employees, and the State of California shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder.

Plaintiff and the State of California shall be deemed to have, and by operation of the Order and Final Judgment granting approval of this Agreement, shall have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the PAGA Period. As a result of this release, Aggrieved Employees will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code § 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

Section 8.02 Tax Treatment and Tax Indemnification.

Aggrieved Employees will assume any tax obligations or consequences which may arise from this Settlement. Aggrieved Employees release any and all claims that they have or may have against Defendant for any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes, indemnification, and any other recoveries related to any payments made under this Settlement Agreement or any compensation provided at any time by Defendant or any of the Released Parties.

If any state or federal taxing authority contacts, investigates, or pursues any action against any PAGA Aggrieved Employees for their individual share of taxes related to any payments made under this Agreement, each Aggrieved Employee shall be responsible for his/her own defense of and payment for any claim of unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the Aggrieved Employee's share of any state or federal tax obligation. If an Aggrieved Employee has questions about any liability to any state or federal taxing authority, they shall contact the Settlement Administrator. The Aggrieved Employees shall not contact Defendant, any of the Released Parties, or Defense Counsel.

Article IX.

Miscellaneous Provisions.

Section 9.01 Unalleged Claims

Neither Plaintiff nor Plaintiff's Counsel are aware of any: (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Agreement; and (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against any Released Parties, except such facts and theories specifically alleged in the operative Complaint in this Action. Plaintiff and Plaintiff's Counsel have no current intention of asserting any other claims against any of the Released Parties in any judicial or administrative forum. Plaintiff and Plaintiff's Counsel do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against any Released Parties. Notwithstanding, Plaintiff and Plaintiff's counsel are aware of Plaintiff's pending workers' compensation case where Plaintiff has obtained separate counsel and which claims have not been released pursuant to this Agreement.

Section 9.02 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 9.03 Parties' Authority.

The signatories hereto represent that they are fully authorized to enter into this Agreement.

Section 9.04 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by Plaintiff, Plaintiff's Counsel, Defendant and Defendant's Counsel who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 9.05 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defendant's Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 9.06 No Modifications and Void *Ab Initio*.

This Agreement may not be changed, altered, or modified, except as provided for in this Agreement, in writing signed by the Parties hereto, and approved by the Court. If the Court does not enter an order granting approval of the Agreement, if the Court's approval of the settlement is reversed, if the Agreement is materially modified by the Court or on appellate review, or if the Effective Date does not occur, this Agreement shall be deemed Void *Ab Initio*. Void *Ab Initio* shall mean the Parties will be returned to the status quo prior to this Agreement being reached and it will be as if the Agreement was never entered into. If Void *Ab Initio*, the Agreement shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable. A material modification shall have the same meaning as that term is used in California law regarding contracts. This Agreement may not be discharged except by performance in accordance with its terms.

Section 9.07 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, and shall in all cases be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

Section 9.08 Headings and Captions.

Paragraph titles or captions contained in the Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement, or any provision thereof.

Section 9.09 Entire Agreement.

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

Section 9.10 Joint Drafting Of Settlement Documents.

Plaintiff's Counsel and Defendant's Counsel have arrived at this Settlement as a result of a series of arm's-length negotiations, taking into account all relevant factors, present and potential. The Agreement has been drafted jointly by Plaintiff's Counsel and Defendant's Counsel; therefore, in any construction or interpretation of this Agreement, the same shall not be construed against any of the Parties.

Section 9.11 No Press Release Or Publicity Regarding The Terms Of The Settlement.

Plaintiff and Plaintiff's Counsel, as well as Defendant and Defendant's Counsel, agree that they will not issue any media or press release, initiate any contact with the media or the press,

respond to any media or press inquiry, or have any communications with the media or the press about the fact, amount, or terms of this Settlement Agreement, except to (i) Aggrieved Employees, but only as shall be contractually required to effectuate the terms of the Settlement, and (ii) the Court, but only as necessary to obtain Court approval of the Settlement. However, for the limited purpose of allowing Plaintiff's Counsel to prove adequacy as class counsel in other actions, Plaintiff's Counsel may disclose the name of the Parties in this action and the venue/case number of this action (but not any other settlement details) for such purposes.

Section 9.12 Stay of Litigation and Court Filings

The Parties agree that the continuing litigation of this Action shall be stayed for all purposes from the date the Parties and their counsel signed the Memorandum of Understanding, except for purposes of seeking approval of the Settlement.

Section 9.13 Continuing Jurisdiction Of The Court.

Pursuant to California Code Of Civil Procedure section 664.6, the Parties agree that the Court shall retain jurisdiction over the Parties, and over this Settlement Agreement, in order to monitor and enforce compliance of this Settlement Agreement, and/or resolve any disputes over this Settlement Agreement or the administration of the benefits of this Settlement Agreement. The Parties further agree that the time within which to bring this action to trial under California Code of Civil Procedure section 583.310 shall be extended from the date of the signing of this agreement by all parties until entry of the final approval order and judgment, or if not entered, the date this agreement shall not longer be of any force or effect.

Section 9.14 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart by facsimile, electronic signature, or email, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Section 9.15 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) first to Mediator Rottman, and if Mediator Rottman is unable to resolve the dispute(s), then to the Court.

Section 9.16 Binding Effect of Agreement.

The Parties, by signing this Agreement, are bound by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Claims Administrators, successors, and assigns.

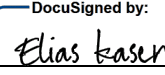
Section 9.17 Attorney's Fees.

If an action is brought to recover damages, equitable relief, or both, or to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees as part of its costs from the other party.

IN WITNESS WHEREOF, the Parties have executed this Private Attorney General Act Settlement Agreement and Limited Release on the date set forth.

APPROVED AND ACCEPTED.

Dated: 6/2/2021, 2021

By 
Elias Kaser

DocuSigned by:
EE85000251B84CD...

Dated: _____, 2021

By _____
Aviation Consultants, Inc.

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: June 2, 2021

JCL LAW FIRM, APC

By 
Jean-Claude Lapuyade
Attorneys for Plaintiff

Dated: June 2, 2021

ZAKAY LAW GROUP, APC

By 
Shani O. Zakay
Attorney for Plaintiff

Dated: June 9, 2021

FISHER & PHILLIPS LLP

By 
Collin D. Cook
Attorneys for Defendant

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Claims Administrators, successors, and assigns.

Section 9.17 Attorney's Fees.

If an action is brought to recover damages, equitable relief, or both, or to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees as part of its costs from the other party.

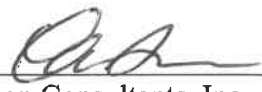
IN WITNESS WHEREOF, the Parties have executed this Private Attorney General Act Settlement Agreement and Limited Release on the date set forth.

APPROVED AND ACCEPTED.

Dated: _____, 2021

By _____
Elias Kaser

Dated: 06/02, 2021

By 
Aviation Consultants, Inc.

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: _____, 2021

JCL LAW FIRM, APC

By _____
Jean-Claude Lapuyade
Attorneys for Plaintiff

Dated: _____, 2021

ZAKAY LAW GROUP, APC

By _____
Shani O. Zakay
Attorney for Plaintiff

Dated: _____, 2021

FISHER & PHILLIPS LLP

By _____
Collin D. Cook
Attorneys for Defendant

EXHIBIT A

NOTICE OF SETTLED REPRESENTATIVE ACTION

Elias Kaser, et al. v. Aviation Consultants, Inc. (Orange County Superior Court, Case No. 30-2021-01191204-CU-OE-CXC)

P.O. Box

Telephone:

«Barcode»

«BarcodeString»

SIMID «SIMID»

«FirstName» «LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice and check as a result of a recent lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”), *Elias Kaser v. Aviation Consultants, Inc.* in Orange County Superior Court, Case Number 30-2021-01191204-CU-OE-CXC that has been settled. The plaintiff in the Action is Elias Kaser (“Plaintiff”) and the defendants are Aviation Consultants, Inc., ACI Jet Orange County, LLC, and ACI Jet SLO County, LLC (“Defendants”).

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations raised in the Action or the merits of the claims or defenses asserted. In fact, the Court has made no determination as to whether the claims alleged by Plaintiff have any merit. Instead, both parties agreed to resolve the Action with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, the parties avoid the risks and costs associated with trial. Defendants are not admitting to any allegations nor to any wrongdoing in this case, and deny that any of their practices at issue in the Action were or are unlawful.

In connection with the settlement, Plaintiff and the State of California are releasing Released Claims against Defendants. The “Released Claims” include all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA that arose during the PAGA Period (defined as the time period from July 31, 2019 to _____, 2021), that were alleged in the Action, including but not limited to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime and/or double time wages owed; (c) failure to pay all overtime and/or double time at the correct rate(s) of pay due to bonus payments, incentive compensation, or otherwise; (d) failure to provide compliant meal periods, or premium pay for non-compliant meal periods; (e) failure to authorize and permit compliant rest periods, or premium pay for non-compliant rest periods; (f) failure to provide accurate, itemized wage statements; (g) failure to timely pay wages during employment and/or upon separation of employment; (h) failure to provide adequate seating; (i) all claims for PAGA penalties that could have been premised on the facts, claims, causes of action or legal theories described above; and (j) all other claims under PAGA that could have been premised on the facts, claims, causes of action or legal theories described above and in the complaint, including but not limited to California Labor Code sections 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 218.5, 218.6, 510, 513, 558, 1174, 1174.5, 1182.12-1198 *et seq.*, 1194, 1197, 2698, and 2699. The release will only apply to claims under the PAGA that arose during the PAGA Period.

By Order dated _____, 2021, the Superior Court approved the settlement of the Released Claims. According to Defendants’ records, you are an Aggrieved Employee, meaning that you were employed by Aviation Consultants, Inc. as an hourly, non-exempt employee during the PAGA Period, and are therefore entitled to a share of the PAGA settlement based upon the Court approved allocation (the “Individual PAGA Payment”). Enclosed with this Notice is a check for your share of the settlement. There is no action required of you and the settlement check shall remain valid for 180 days.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties and will be reported on an IRS Form 1099. You should rely on the advice and counsel of your own tax advisors as to the tax consequences of your Individual PAGA Payment. Neither Counsel for Plaintiff, Counsel for Defendants, nor the Settlement Administrator may legally provide you with any advice regarding the tax implications of the receipt of this settlement payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice. Enclosed are the appropriate tax forms pertaining to your payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or about the claims process. If you have any questions, you may call or write to _____ (the Settlement Administrator) using the contact information at the top of this correspondence. Alternatively, if you wish to find out more about the settlement, you may refer to the pleadings and other papers filed in the Action, which are available at the Orange County Superior Court.

EXHIBIT B

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (the “Agreement”) is made and entered into between Elias Kaser, an individual (“Plaintiff”), on the one hand, and Aviation Consultants, Inc. (“Defendant”) on the other hand. Plaintiff and Defendant are referred to collectively as the “Parties” and individually as a “Party.” This Agreement is intended to resolve all disputes and extinguish those obligations described below.

RECITALS

WHEREAS, Plaintiff was hired by Defendant in or around November 2018 as a Valet;

WHEREAS, a dispute has arisen between the Parties arising out of Plaintiff’s employment with Defendant and the termination of his employment in or around March 2020;

WHEREAS, on or about December 1, 2020, Plaintiff sent a demand letter to Defendant alleging, among other things, claims against Defendant for: (1) wrongful termination in violation of public policy; (2) race and national origin discrimination and disparate treatment; (3) disability discrimination and disparate treatment; (4) failure to engage in the interactive process and to reasonably accommodate; (5) meal and rest period violations; (6) failure to pay for work off the clock; (7) non-compliant wage statements; and (8) waiting time penalties (the “Threatened Claims”);

WHEREAS, Defendant denies and disputes any and all of Plaintiff’s alleged claims and allegations in the Threatened Claims;

WHEREAS, the Parties wish to avoid the expense of further proceedings and desire to resolve any and all claims alleged by Plaintiff, or that could be alleged, arising out of or in connection with Plaintiff’s employment and the cessation thereof, including but not limited to those asserted in the Threatened Claims.

AGREEMENT

NOW THEREFORE, in consideration of and exchange for the promises, covenants, and releases contained in this Agreement and the other valuable consideration described herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties mutually agree as follows:

1. **PAGA SETTLEMENT AGREEMENT:** The Parties have separately agreed to a settlement of the claims arising under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.* contained in Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (the “Action”). That separate settlement is subject to Court approval, and this Agreement is conditioned upon Court approval of that separate PAGA settlement.

2. **PROMISES OF DEFENDANT:**

a. **Payment to Plaintiff:** For and in consideration of the commitments made herein by Plaintiff, Defendant agrees to provide to Plaintiff the total sum of \$37,000 (“Settlement Sum”) in three separate checks. The first check will be made payable to the Zakay Law Group, APC, and mailed to 3900 Old Town Ave., Suite C204, San Diego, CA 92110 in the amount

of \$8,333.33.00, and for tax purposes, a Form 1099 will be issued to Zakay Law Group, APC. The second check will be made payable to Lawyers for Employee and Consumer Rights, and mailed to 4100 West Alameda Ave., Third Floor, Burbank, CA 91505 in the amount of \$12,000.00 and for tax purposes, a Form 1099 will be issued to Lawyers for Employee and Consumer Rights. The third check shall be made payable to Elias Kaser in the amount of \$16,667.67, less applicable withholdings and payroll deductions, and a form W-2 shall be issued to Elias Kaser. For tax purposes, the Settlement Sum shall be treated as 15% wages, 85% non-economic damages, penalties, interest and legal fees and costs. It is understood and agreed that Defendant is not liable for the apportionment of any of the Settlement Sum as between Plaintiff and any other person or entity. All payments are contingent upon approval of the PAGA Settlement, as an express and material provision and condition precedent of this executed Agreement.

b. **Timing of Settlement Sum:** The Settlement Payment shall be made by no later than fifteen (15) business days from, and is contingent upon, Defendant's counsel receiving (1) this Agreement executed by Plaintiff, (2) Form W-9 executed by Plaintiff, and (3) Form W-9 executed by Plaintiff's counsel; (4) an Order signed by the Court approving the Parties' Private Attorneys General Act Settlement Agreement and Limited Release, whichever is later. The Settlement Sum as set forth in this Paragraph is deemed timely delivered if deposited by U.S. Mail by the date due and/or with an overnight delivery service on or before the date the Settlement Payment is due to be delivered. Upon delivery of the Settlement Sum, Defendant will have fully met its obligations under this Agreement and will not be liable in any manner for the distribution, division or payment of any portion of the Settlement Sum to or between any counsel Plaintiff may have retained and/or consulted, including but not limited to Lawyers for Employee and Consumer Rights, Eva Abrams and Zakay Law Group, APC, Shani Zakay. By execution of this Agreement, Plaintiff authorizes payment to be made as set forth in this Paragraph.

c. **No Representation Regarding Taxability:** Plaintiff understands and agrees that he is responsible for the payment of any taxes which are required to be paid to the State of California, the United States Government, or any other entity as a result of this settlement and the Settlement Sum above. Plaintiff acknowledges that no representations regarding the tax consequences of the Settlement Sum have been made by Defendant or its counsel. Plaintiff agrees that in the event that some federal, state, or local agency takes the position that taxes should have been withheld from the Settlement Sum pursuant to this Agreement, that Plaintiff will be solely responsible for payment of any such alleged tax obligations and will indemnify and hold Defendant harmless from any resulting tax liability, interest, attorneys' fees, or penalty associated therewith.

d. **Response to Solicitation for Employment:** In response to solicitation for employment references, or in response to any outside inquiry, Defendant shall provide only the dates of Plaintiff's employment and job classification.

3. **PROMISES OF PLAINTIFF:**

a. **General Release of Claims:** Plaintiff, on behalf of himself and his heirs, executors, administrators, spouses, successors and assigns, hereby releases, acquits and forever discharges Defendant, its parents, subsidiaries and affiliated entities, including but not limited to its officers, directors, shareholders, persons, employees, agents, servants, representatives, members, attorneys, insurers, re-insurers, assigns, and each of their parents, subsidiaries and related entities, officers, directors, shareholders, persons, employees, agents, servants, representatives, members, attorneys, insurers, re-insurers, assigns, and all other entities with whom they each have been, are

now, or may hereafter be affiliated with including all predecessors (collectively “Releasees”), from any and all claims, demands, obligations, actions, causes of action, liabilities, debts, promises, agreements, demands, attorneys’ fees, losses and expenses, known or unknown, suspected or unsuspected, filed or unfiled, that Plaintiff now has, or which could have been asserted arising out of any known or unknown act, occurrence, condition or incident occurring on or before the date of this agreement, including but not limited to those arising out of or in connection with any claims, demand, charges, or complaints, arising out of or in connection with Plaintiff’s employment, the cessation thereof, the Threatened Claims or any other interaction or relations with Releasees.

This release includes, but is not limited to, any and all claims, demands, causes of actions, obligations, charges, liabilities, attorneys’ fees, costs, actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising out of, or based upon: the Threatened Claims, all claims of harassment, discrimination, and/or retaliation in violation of State or Federal law; all claims for failure to accommodate and/or failure to engage in the interactive process; violations, interference with and/or retaliation for requesting and taking a leave of absence under state or Federal law; all claims of violation of public policy, including a claim for wrongful and/or constructive termination of employment; all claims for fraud or misrepresentation; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; all claims for unpaid wages, commissions, or other benefits, including minimum wage, regular, overtime, double time, vacation, associated penalties and/or premiums, and expense reimbursement; all claims for rest or meal periods and associated penalties and/or premiums; all claims for inaccurate wage statements; all claims for the alleged failure to pay all wages at separation; all claims for failure to timely provide documents for review and/or inspection; any claim for unlawful or unfair business practices; all claims for emotional distress; and any and all claims generally relating to Plaintiff’s employment with Defendant and the cessation thereof, including any alleged violation of any federal, state or other governmental statute, regulation, ordinance, or executive order, including without limitation:

- (1) The Civil Rights Acts of 1866, 1964, and 1991, as amended;
- (2) 42 U.S.C. § 1981;
- (3) The California Fair Employment and Housing Act;
- (4) Section 503 of the Rehabilitation Act of 1973;
- (5) The Fair Labor Standards Act (including the Equal Pay Act);
- (6) The California and United States Constitutions;
- (7) The California Labor Code, specifically including, but not limited to the Private Attorneys General Act pursuant to Labor Code § 2699, et seq.;
- (8) The California Business and Professions Code;
- (9) The Employee Retirement Income Security Act, as amended;
- (10) The California Family Rights Act;
- (11) The Americans with Disabilities Act;
- (12) The Family Medical Leave Act;
- (13) The California Pregnancy Discrimination Act;
- (14) The California Wage Orders;
- (15) The National Labor Relations Act;
- (16) The Immigration Reform and Control Act;
- (17) California Occupational Safety and Health Act, or the Federal equivalent;
- (18) The Worker Adjustment and Retraining Notification Act; and
- (19) The Families First Coronavirus Response Act (FFCRA).

This release in all respects has been voluntarily and knowingly executed with the express intention of effecting the legal consequences provided in the California Civil Code section 1541, that is, the extinguishment of obligations herein designated

b. **Dismissal of Released Actions:** Plaintiff will dismiss with prejudice any Released Actions instituted against Released Parties in any court, governmental administrative agency, or private organization, except for Plaintiff's workers' compensation case. Plaintiff understands and acknowledges that neither this Agreement, nor anything contained herein, shall be construed to prohibit him from filing a complaint with, or participating in any investigation or proceeding conducted by, a federal, state, or local administrative agency (including the Equal Employment Opportunity Commission and the National Labor Relations Board).

Notwithstanding the foregoing, Plaintiff waives any right to monetary or other individual relief related to any such administrative complaint. Because the Civil Action is a PAGA action, dismissal must be approved by the Court. Accordingly, Plaintiff and Defendant enter into this Settlement Agreement on a conditional basis. Upon execution of this Agreement by the Parties, Plaintiff's counsel shall file a motion to approve the PAGA Settlement. Defendant's obligation to pay the Settlement Sum is contingent upon and does not arise unless, and after the Court first approves the PAGA Settlement ("Effective Date").

c. **No Amounts Owing.** Plaintiff agrees and acknowledges that, except with respect to the settlement of the PAGA Action, which has been resolved separately and in accordance with a separate PAGA Settlement Agreement, any dispute related to the payment of wages or other compensation to Plaintiff is hereby resolved to Plaintiff's complete and full satisfaction and that Plaintiff has, in fact, received all wages, overtime, premium pay, associated Labor Code penalties, reimbursements, and compensation to which Plaintiff is due.

d. **No Pending Claims.** Plaintiff agrees and covenants not to file any suit, charge or complaint against Releasees in any court or administrative agency, with regard to any claim, demand, liability or obligation arising out of Plaintiff's employment with Defendant or separation therefrom. Plaintiff further represents that other than the Threatened Claims and the Action, no claims, complaints, charges, or other proceedings are pending in any court, administrative agency, commission or other forum relating directly or indirectly to Plaintiff's employment with Defendant, other than his PAGA Action. Since the intent of this Agreement is to bring to an end all claims, controversies, and causes of action Plaintiff may have or claim to have against Defendant, Plaintiff agrees to take all necessary steps to dismiss, with prejudice, and/or withdraw any claim or cause of action that may be contemplated, filed, or pending against Defendant and/or Releasees, except with respect to the PAGA Action, which shall be resolved in accordance with the separate PAGA Settlement Agreement entered into between the Parties.

e. **Acknowledgement.** Plaintiff acknowledges and agrees that he would not otherwise be entitled to the consideration set forth herein were it not for his covenants, promises, and releases set forth herein. Plaintiff acknowledges that he has received all wages and compensation due to him from Releasees and that Releasees shall owe Plaintiff nothing further once Plaintiff receives the consideration described in Paragraph 2(a), above, except as otherwise provided for in the separate PAGA Settlement Agreement entered into between the Parties, whereby Plaintiff may be entitled to payment as an Aggrieved Employee. Plaintiff acknowledges that he has been granted any leave to which Plaintiff was entitled under Defendant's policies, the Families First Coronavirus Response Act, Family and Medical Leave Act, California Paid Sick Leave Law, and any

similar state or local leave or disability accommodation laws and Plaintiff has no known workplace injuries or occupational diseases.

f. **Additional Consideration:** Plaintiff agrees that promises in this Agreement by Defendant represents obligations by Defendant to Plaintiff that are in addition to anything of value to which Plaintiff was otherwise entitled from Defendant.

g. **Advice to Consult an Attorney:** Plaintiff acknowledges that Plaintiff was advised to consult with an attorney prior to Plaintiff's signing this Agreement.

h. **No Assignment:** Plaintiff will make no assignment of any Released Actions, and Plaintiff represents that no such assignment has been made.

i. **No Current or Past Work Related Injury:** Plaintiff represents and warrants that Plaintiff has no knowledge of any work-related injury or illness incurred while working for Defendant except those for which claims were made prior to the date of this agreement.

j. **Non-Disparagement:** Plaintiff agrees to do nothing to disparage Defendant and/or any of the current or former owners, officers, directors, trustees, staff, members, employees or agents of Defendant or its affiliated companies in any communications whatsoever after the date of this Agreement. Plaintiff further agrees that he will not act in any manner that damages the operation or reputation of Releasees. "Disparaging conduct" in this provision shall be defined pursuant to California Civil Code §§ 45 *et seq.*

k. **Non-Cooperation.** To the extent permitted by law, Plaintiff agrees that he will not counsel or assist any attorneys or clients in the presentation or prosecution of any disputes and/or differences by any third party against Releasees, except with respect to the PAGA Action, unless pursuant to a lawfully issued subpoena or other order by a court or agency of competent jurisdiction. Plaintiff further agrees to give Defendant's counsel notice within three (3) business days of receipt of a subpoena or other order by court or agency pursuant to this Paragraph.

l. **Confidentiality:** Except as necessary as part of Plaintiff's efforts to seek approval of the PAGA Settlement with the Court, Plaintiff shall not disclose, to any person or entity, including but not limited to any print, broadcasting, electronic, or any other media, the existence of this Agreement, any of the terms or provisions of this Agreement, or any of the facts and circumstances concerning the Released Actions; however, that Plaintiff shall not be prohibited from making such disclosures to any person who has a strict legal necessity to know, but shall specifically make best efforts to prevent those persons from repeating those disclosures to any other person. If any disclosures are made as provided in this Paragraph, each individual who receives the disclosure shall first be informed of and agree to be bound by this confidentiality clause, or other such disclosures required by law to enforce this Agreement. This confidentiality provision shall not prohibit Plaintiff from informing people that "the matter has been resolved."

m. **Waiver of Civil Code Section 1542:** Plaintiff expressly waives and relinquishes any rights and benefits pursuant to California Civil Code § 1542 with respect to the Released Actions herein, and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 that reads:

“SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.] “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN TO HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

n. **Newly Discovered Facts.** Plaintiff hereby acknowledges that he may hereafter discover facts different from or in addition to those that he now knows or believed to be true when he expressly agreed to assume the risk of the possible discovery of additional facts, and he agrees that this Agreement will be and remain effective regardless of such additional or different facts. Plaintiff expressly agrees that this Agreement shall be given the full force and effect according to each and all of its express terms and provisions, including those relating to unknown or unsuspected claims, demands, causes of action, governmental, regulatory, or enforcement actions, charges, obligations, damages, liabilities, and attorneys’ fees and costs, if any, as well as those relating to any other claims, demands, causes of action, obligations, damages, liabilities, charges, and attorneys’ fees and costs specified herein.

o. **Attorney Liens.** Plaintiff represents and warrants that all legal expenses, bills, costs or contingency fee agreements resulting from or arising out of the representation of Plaintiff by any attorney in relation to the Threatened Claims are Plaintiff’s responsibility to pay, and that any liens based on any legal expenses, bills, costs or contingency fee agreements incurred as a result of the Threatened Claims will be satisfied by Plaintiff. Plaintiff will indemnify, defend and hold Releasees harmless from any such claims.

p. **No Additional Recovery.** It is the intent of this Agreement that Plaintiff, his lienholders, and any other individual or entity with an interest in Plaintiff’s claims shall not recover, directly or indirectly, any sums from Releasees other than the funds received pursuant to this Agreement and set forth in Paragraph 2(a), above, except as provided for in the PAGA Settlement Agreement separately entered into between the Parties. If, despite the provisions of this Paragraph, any Releasee receives any claims, including a claim for contribution, any indemnity arising out of a claim brought by Plaintiff against another person, Plaintiff shall indemnify, provide a full defense for and hold harmless the Releasees for such amount. In the event a trier of fact determines (and all appeals are exhausted or the time for such appeals have expired) that any Releasee is or would be liable for indemnity under any theory of law or equity, this Agreement shall act as a general release, releasing not only the Releasee but every other individual, trustee, firm, trust, corporation, or entity of any kind, who is or would be entitled to a defense and indemnity from the Releasees with respect to any liability that person, firm, or corporation may have to Plaintiff.

q. **Medical Bills, Liens, and Other Potential Rights for Reimbursement.**

(1) **Responsibility for Satisfaction of All Liens.** Plaintiff represents and warrants that all bills, costs or liens resulting from or arising out of Plaintiff’s alleged injuries, claims and/or the Threatened Claims are Plaintiff’s responsibility to pay. Plaintiff agrees to assume responsibility for satisfaction of any and all demands for payment, claims or liens of any

kind, that arise from or are related to payments made or services provided to Plaintiff or on his behalf. Plaintiff agrees to assume responsibility for all expenses, costs or fees incurred by him related to his alleged injuries, claims and/or the Threatened Claims including without limitation, all Medicare conditional payments, subrogation claims, liens or other rights to payment, relating to medical treatment or lost wages that have been or may be asserted by any health care provider, insurer, governmental entity, employer or other person or entity. Further, Plaintiff will indemnify, defend and hold Releasees harmless from any and all damages, claims and rights to payment, including any attorneys' fees, brought by any person, entity or governmental agency to recover any of these amounts.

(2) Good Faith Resolution. This settlement is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Section 1395y(b). The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such in the settlement terms.

(3) Agreement to Indemnify, Defend, and Hold Harmless. Plaintiff will indemnify, defend and hold Releasees harmless from any and all claims, liens, Medicare conditional payments and rights to payment, known or unknown. If any governmental entity, or anyone acting on behalf of any governmental entity, seeks damages including multiple damages from Releasees relating to payment by such governmental entity, or anyone acting on behalf of such governmental entity, relating to Plaintiff's alleged injuries, claims and/or the Threatened Claims, Plaintiff will defend and indemnify Releasees and hold Releasees harmless from any and all such damages, claims, liens, Medicare conditional payments and rights to payment, including any attorneys' fees sought by such entities.

4. PROMISES OF PLAINTIFF AND DEFENDANT

a. No Admission of Wrongdoing: Plaintiff and Defendant agree that this Agreement is not to be construed as an admission, by either party, of any wrongdoing, by either party. Defendant also does not admit to any liability or wrongdoing whatsoever with respect to Plaintiff's PAGA allegations. Defendant expressly denies any and all such liability and wrongdoing. This Agreement, and the terms herein, shall not be used or introduced for any purpose other than to enforce the terms contained herein, or as necessary to seek approval of the PAGA Settlement with the Court. The Parties further agree and understand that each party to this Agreement shall bear their own respective attorneys' fees, costs, expenses related to any dispute arising from the enforcement of this Agreement.

b. No Interference with Rights. Nothing in this Agreement is intended to waive claims (i) for unemployment or workers' compensation benefits, (ii) for vested rights under ERISA-covered employee benefit plans as applicable on the date Plaintiff signs this Agreement, or (iii) which cannot be released by private agreement. However, by signing this Agreement, Plaintiff is waiving his rights to individual relief from the Releasees (including any money damages, reinstatement or other legal or equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by Plaintiff or on Plaintiff's behalf by any third party, except where such a waiver of individual relief is prohibited.

c. Attorneys' Fees and Costs. The Parties agree that they will bear their own attorneys' fees and costs incurred in connection with this matter.

5. **CONSTRUCTION OF THIS AGREEMENT:**

a. **Choice of Law:** This Agreement is to be construed pursuant to the laws of the State of California, including California law regarding choice of law.

b. **Invalid Agreement Provisions:** Should any provision of this Agreement become legally unenforceable, no other provision of this Agreement shall be affected, and this Agreement shall be construed as if the Agreement had never included the unenforceable provision.

c. **No Other Agreement:** Except as provided for herein, this Agreement represents the full agreement between Defendant and Plaintiff. In signing this Agreement, Defendant and Plaintiff rely upon no promise, representation, or other inducement that is not expressed in this Agreement. This Agreement may be modified only by written agreement of Defendant and Plaintiff and may not be modified by any oral agreement.

d. **Practices Inconsistent with this Agreement:** No provision of this Agreement shall be modified or construed by any practice that is inconsistent with such provision, and failure by Defendant or Plaintiff to comply with any provision, shall not affect the rights of any to thereafter comply or require the other to comply.

e. **Attorney's Fees:** If an action is brought to recover damages, equitable relief, or both, or to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees as part of its costs from the other party.

f. **Dismissal and Enforcement of Settlement Agreement:** The Court shall retain jurisdiction over the parties until performance in full terms of this Agreement pursuant to Cal. Code of Civil Procedure section 664.6. Pursuant to Evidence Code § 1123, this Agreement is enforceable, binding and admissible in a court of law.

g. **Ambiguities Not Construed Against Drafting Party:** The language contained in this Agreement has been reviewed and agreed to by all parties, and any ambiguities in the Agreement shall not be construed against whichever party drafted the particular provision in question.

h. **Counterparts:** This Agreement may be executed in counterparts, which will collectively, along with a copy of the text of the remainder of the Agreement, be deemed the original Agreement for all purposes. Furthermore, the Parties agree that a photocopy, fax, or email of signature shall have equal force and effect and admissibility as an original signature.

i. **Attorneys' Fees and Costs:** Defendant and Plaintiff agree that each shall bear their own costs and fees associated with discovery, pleadings, and any other facet of Released Actions.

j. **No Reliance upon Representations by Defendant.** Plaintiff hereto represents and acknowledges that in executing this Agreement she does not rely and has not relied upon any representation or statement made by Defendant or by the agents, attorneys or representatives of Defendant with regard to the subject matter of this Agreement, or its basis, or the

effects of this Agreement other than those representations specifically set forth in this written document.

k. **Binding Nature; No Assignment.** This Agreement, and all the terms and provisions contained herein, shall bind the heirs, personal representatives, successors and assigns of Plaintiff, and inure to the benefit of Defendant, its agents, directors, officers, employees, servants, successors, and assigns. Plaintiff promises and guarantees that he has not made, and will not make, any assignment of any claim, chose in action, right of action, or any right of any kind whatsoever, embodied in any of the claims that are released herein, and that no other person or entity of any kind had or has any interest in any of the claims released herein.

l. **Construction.** This Agreement is the product of arms-length negotiations and is considered to be jointly drafted. As such, it shall not be construed against any party because that party caused it to be reduced to a written instrument.

m. **Fairness of Settlement.** The Parties agree that this settlement is fair, reasonable and adequate. The Parties covenant never to challenge this Agreement.

n. **Effect of Illegality.** Should any part, term or provision of this Agreement be declared or determined by any Court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms or provisions of this Agreement shall not be affected thereby. Said illegal, invalid or unenforceable part, term or provision shall be deemed not to be a part of this Agreement.

o. **Compliance with Terms; No Waiver.** The failure to insist upon compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

p. **Enforcement Costs.** The Parties agree that in the event litigation is initiated by either Party to interpret or enforce this Agreement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees incurred in conjunction with the litigation, in addition to any other relief granted.

q. **Section Headings.** The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

r. **Representative Capacity.** Each Party executing this Agreement in a representative capacity represents and warrants that he or she is empowered to do so.

s. **Survival of Warranties and Representations.** The warranties and representations of this Agreement are deemed to survive the date of execution thereof.

t. **Voluntary and Knowing.** This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto.

6. **EFFECTIVE DATE OF THIS AGREEMENT:** This Agreement shall be effective upon the Court's issuance of a final approval of the PAGA Settlement ("Effective Date").

I, having read the foregoing Settlement Agreement and Release of All Claims and knowing the contents thereof, am affecting this Settlement and executing this Release after having the opportunity to obtain legal advice from counsel, and I sign the same as my own free act.

APPROVED AND ACCEPTED.

Dated: 6/2/2021, 2021

By Elias Kaser
Elias Kaser

DocuSigned by:
EE85000251B84CD...

Dated: _____, 2021

By _____
Its: _____
Aviation Consultants, Inc.

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: 5/28/2021, 2021

JCL LAW FIRM, APC

By Jean-Claude Lapuyade
Jean-Claude Lapuyade
Attorneys for Plaintiff

DocuSigned by:
DEBC25D5B9CD469...

Dated: 5/28/2021, 2021

ZAKAY LAW GROUP, APC

By Shani Zakay
Shani O. Zakay
Attorney for Plaintiff

DocuSigned by:
4ECDE73A91D4420...

I, having read the foregoing Settlement Agreement and Release of All Claims and knowing the contents thereof, am affecting this Settlement and executing this Release after having the opportunity to obtain legal advice from counsel, and I sign the same as my own free act.

APPROVED AND ACCEPTED.

Dated: _____, 2021

By _____
Elias Kaser

Dated: 06/02, 2021

By 
Its: DIRECTOR, Human Resources
Aviation Consultants, Inc.

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: _____, 2021

JCL LAW FIRM, APC

By _____
Jean-Claude Lapuyade
Attorneys for Plaintiff

Dated: _____, 2021

ZAKAY LAW GROUP, APC

By _____
Shani O. Zakay
Attorney for Plaintiff

Dated: 06/11/2021, 2021

LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS

By *Eva Abrams*

Eva G. Abrams

Attorney for Plaintiff

Dated: June 9, 2021

FISHER & PHILLIPS LLP

By *Collin Cook*

Collin D. Cook

Attorneys for Defendant

EXHIBIT 2

Activities Export

08/13/2021

3:55 PM

Date ▼	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
08/13/2021	\$	OneLegal Fee - Joint Statement ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	-	14.67	-	14.67
08/12/2021	\$	Filing Fee and Remote Appearance Cost - Motion for Approval (Estimate) ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	-	150.00	-	150.00
06/04/2021	\$	OneLegal Fee - Status Conference Statement ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	-	14.67	-	14.67
04/08/2021	\$	Expert Costs ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	-	503.25	-	503.25
10/26/2020	\$	Mediation Fee ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	-	9,000.00	-	9,000.00
07/31/2020	\$	PAGA Filing Fee ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	-	75.00	-	75.00
07/31/2020	\$	Postage - PAGA letters ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	-	25.10	-	25.10
07/31/2020	\$	Photocopies - PAGA letters ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	-	33.75	-	33.75
					0.00h		\$0.00 0.0h	\$9,816.44 0.0h

Activities Export

08/13/2021
3:55 PM

Date ▼	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
08/13/2021		Revise the motion for approval based on comments from OPC. Draft declaration in support. Draft notice. Draft proposed order. Compile exhibits. Discuss necessary work with staff and co-counsel. Finalize motion for filing.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	6.00	550.00	-	3,300.00
08/10/2021		Discuss with Attorney Zakay and co-counsel administration bids for motion for approval  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Jackland Hom	0.20	350.00	-	70.00
07/28/2021		More work on the motion for approval.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	1.00	550.00	-	550.00
07/23/2021		Draft motion for settlement approval.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	5.00	550.00	-	2,750.00
07/16/2021		Emails regarding work on the MPA.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.20	550.00	-	110.00
06/18/2021		Multiple phone calls with OPC and client regarding negative reviews on Google.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.50	550.00	-	275.00
06/09/2021		Review revised notice of settlement and emails with OPC regarding the same.	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.30	550.00	-	165.00
					80.30h		\$0.00 0.0h	\$38,525.00 80.3h

Activities Export

08/13/2021

3:55 PM

Date ▼	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
		● Unbilled						
06/04/2021	🕒	Joint Status Conference Statement ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	1.00	150.00	-	150.00
06/02/2021	🕒	Work on joint status report. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.20	550.00	-	110.00
06/01/2021	🕒	Joint SC Statement - Sending to OC ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	1.00	150.00	-	150.00
05/28/2021	🕒	Drafting up Joint Statement - Sent for Review ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.50	150.00	-	75.00
05/28/2021	🕒	More work on the settlement agreement. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.50	550.00	-	275.00
05/06/2021	🕒	Review revisions to settlement documents. Accept some changes and make further revisions and comments. Emails with OPC accordingly. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	2.00	550.00	-	1,100.00
04/14/2021	🕒	Review and revisions to the settlement documents. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	1.00	550.00	-	550.00
04/08/2021	🕒	Process payment for expert.	29901-Kaser	Shani	0.10	550.00	-	55.00
					80.30h		\$0.00	\$38,525.00
							0.0h	80.3h

Activities Export

08/13/2021

3:55 PM

Date	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
		● Unbilled	Elias Kaser v. Aviation Consultants, Inc.	Zakay				
03/26/2021	🕒	Draft long-form PAGA and individual settlement agreements, Notice of PAGA settlement ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Jackland Hom	6.00	350.00	-	2,100.00
03/23/2021	🕒	Prepare for and attend mediation. Review MOU. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Jackland Hom	9.00	350.00	-	3,150.00
03/23/2021	🕒	Prepare for and attend mediation. Work on MOU. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	9.50	550.00	-	5,225.00
03/22/2021	🕒	Draft MOU for the mediation. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	1.00	550.00	-	550.00
03/16/2021	🕒	Revise mediation brief. Review file to prepare and extract exhibits. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Jackland Hom	2.00	350.00	-	700.00
03/15/2021	🕒	Review and revise the mediation brief. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	2.50	550.00	-	1,375.00
03/15/2021	🕒	Review file and expert report. Draft mediation brief. Emails with Attorney Zakay and co-counsel re same. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Jackland Hom	6.00	350.00	-	2,100.00
					80.30h		\$0.00 0.0h	\$38,525.00 80.3h

Activities Export

08/13/2021

3:55 PM

Date ▼	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
03/09/2021		Review expert report.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	1.00	550.00	-	550.00
03/04/2021		Call with expert regarding data and damage analysis.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.50	550.00	-	275.00
03/01/2021		Emails with expert regarding damage analysis and schedule a call to discuss.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.20	550.00	-	110.00
02/26/2021		Begin review of data from OPC. Emails with co-counsel regarding analysis. Emails with OPC regarding the data.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	3.00	550.00	-	1,650.00
02/18/2021		Emails with OPC regarding sampling for mediation.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.30	550.00	-	165.00
02/15/2021		Telephone conversation with OPC regarding data for mediation. Follow up call with co-counsel to discuss.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.30	550.00	-	165.00
02/12/2021		Review email from OPC and discuss response with co-counsel. Draft response accordingly regarding mediation discovery.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.50	550.00	-	275.00
					80.30h		\$0.00 0.0h	\$38,525.00 80.3h

Activities Export

08/13/2021

3:55 PM

Date ▼	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
02/01/2021		Emails with OPC regarding data for mediation.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.30	550.00	-	165.00
10/30/2020		Emails regarding tolling agreement.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.20	550.00	-	110.00
10/28/2020		Follow up on the tolling agreement.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.10	550.00	-	55.00
10/26/2020		Process payment for mediation.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.20	550.00	-	110.00
10/25/2020		Follow up emails regarding mediation and tolling.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.20	550.00	-	110.00
10/20/2020		Finalize the tolling agreement and send to OPC for signature.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.20	550.00	-	110.00
10/19/2020		Review email from mediator regarding mediation and calendar all relevant dates accordingly. Email to co-counsel regarding Tolling Agreement.  Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.30	550.00	-	165.00
10/19/2020		Emails with OPC and the mediator's office regarding mediation dates.	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.20	550.00	-	110.00
					80.30h		\$0.00 0.0h	\$38,525.00 80.3h

Activities Export

08/13/2021

3:55 PM

Date ▼	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
		● Unbilled						
10/12/2020	🕒	Review and accept revisions to the tolling agreement. Emails with OPC regarding mediation dates and mediators. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.50	550.00	-	275.00
10/06/2020	🕒	Emails with OPC regarding the tolling agreement. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.10	550.00	-	55.00
10/06/2020	🕒	Emails with the client regarding rejected employment application. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.20	550.00	-	110.00
10/05/2020	🕒	Draft tolling agreement. Emails with co-counsel regarding the same and regarding deadline to file complaint. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	2.00	550.00	-	1,100.00
09/25/2020	🕒	Telephone conversation with OPC regarding pre-litigation mediation. Follow up call with co-counsel to discuss mediators and email to OPC accordingly. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.50	550.00	-	275.00
09/24/2020	🕒	Emails with OPC and co-counsel to schedule a call. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.20	550.00	-	110.00
09/03/2020	🕒	Review letter from OPC regarding	29901-Kaser	Shani	1.00	550.00	-	550.00
					80.30h		\$0.00	\$38,525.00
							0.0h	80.3h

Activities Export

08/13/2021

3:55 PM

Date ▼	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
		arbitration agreement. Emails with co-counsel accordingly. ● Unbilled	Elias Kaser v. Aviation Consultants, Inc.	Zakay				
08/26/2020	🕒	Telephone conversation with OPC regarding the case and early mediation. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.30	550.00	-	165.00
08/20/2020	🕒	Review letter regarding preservation of evidence. Call and email to client accordingly. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	0.50	550.00	-	275.00
07/31/2020	🕒	Continue review of the file. Multiple conversations with the client and with co-counsel. Continue work on the complaint. Draft PAGA letters. File PAGA online. Serve defendants. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	6.00	550.00	-	3,300.00
07/30/2020	🕒	Review client files and begin work on complaint. ● Unbilled	29901-Kaser Elias Kaser v. Aviation Consultants, Inc.	Shani Zakay	6.00	550.00	-	3,300.00
					80.30h		\$0.00 0.0h	\$38,525.00 80.3h

EXHIBIT 3

Zakay Law Group, APC
3990 Old Town Ave. Suite C204
San Diego, California 92110
Telephone: (619) 255-9047
Fax: (858) 404-9203

1. Firm Practice Areas:

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

2. Attorney Shani O. Zakay Biography:

• **PRACITCE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

• **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Court of California (all courts)
United States District Court of Indiana for the Northern District
United States Court of Appeals for the 9th Circuit

• **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Founder, April 2018

SILLDORF LAW, LLP, San Diego, CA (now known as Berding & Weil)
Partner, January 2012 – March 2018

• **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA

Juris Doctor, *magna cum laude*, April 2011

Honors: Dean's List: Spring 2009, Fall 2009, Spring 2010, Fall 2010, Spring 2011.

Academic Achievement Awards: Advanced Legal Research, Constitutional Law II, Criminal Procedure, Insurance Law & Litigation, Law Office Technologies, Property II, Products Liability, Trusts & Estates.

Activities: Associate Editor, *California Western Law Review*
Legal Skills Honor Instructor for Professor Leslie Culver
Vice President, Jewish Student Union

SAN DIEGO STATE UNIVERSITY, San Diego, CA

Bachelor of Science, Business Administration, Management, *cum laude*, May 2008

Honors: Dean's List: Spring 2007 and Fall 2007

- **COMMUNITY SERVICE**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Spring 2016, 2018
Moot Court Judge

COMMUNITY LAW PROJECT, San Diego, CA
October 2018 – Present
Volunteer Attorney on Employment Matters

3. **Attorney Jackland K. Hom Biography:**

- **PRACTICE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation.

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Courts of California (all courts)

- **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Associate, January 2021 - present

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP, San Diego, CA
Associate, November 2019 – September 2020

- **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Juris Doctor, April 2019

Honors: Dean's List: Fall 2017, Spring 2018.

Academic Achievement Awards: Advanced Prosecution Function.

Activities: Senior Editor, *California Western Law Review*
President, Asian Pacific American Law Students Association

UNIVERSITY OF CALIFORNIA, RIVERSIDE, Riverside, CA
Bachelor of Arts: Political Science, English Literature, June 2015
Honors: Dean's List

4. Class Action & Representative Cases:

1. Hubscher v. Bodyspirit, LLC

Court	San Diego
Case No.	37-2016-00021261-CU-OE-CTL
Nature	Independent Contractor Misclassification
Status	Settled

2. Henry v. InMotion Entertainment Group, LLC

Court	San Francisco
Case No.	CGC-18-565643
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

3. Moore v. Zirx Transportation

Court	San Francisco
Case No.	CGC-18-566655
Nature	Independent Contractor Misclassification
Status	Settled

4. Pasallo v. GSG Protective Services

Court	San Diego
Case No.	37-2018-00037611-CU-OE-CTL
Nature	Meal/Rest Break claims
Status	Settled

5. Villaroman v. C.C.H.C.

Court	Orange County
Case No.	30-2018-01013128-CU-OE-CXC
Nature	Meal/Rest Break claims
Status	Settled

6. Flores v. Plastic Express

Court	Los Angeles
Case No.	BC719071
Nature	Meal/Rest Break and minimum wage claims
Status	Settled

7. Tressler v. Spoonful Management

Court	Los Angeles
Case No.	BC719405
Nature	Meal/Rest Break claims
Status	Settled

8. Leymaster v. Toms Sierra Company, Inc.

Court	Placer
Case No.	SCV0041735
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

9. Murphy v. Rockler Retailer Group, Inc.

Court	Sacramento
Case No.	34-2018-00241374
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

10. Bruemmer v. Tempur Retail Stores, LLC.

Court	Marin
Case No.	CIV1803646
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

11. Christina Cummings v. G6 Hospitality, LLC

Court	San Diego
Case No.	37-2018-00056207-CU-OE-CTL 19CV122 GPC LL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

12. Nicolai Laguatan v. Prevent LSS

Court	San Diego
Case No.	37-2018-00057434-CU-OE-CTL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

13. Lisa Ramirez v. Carefusion Resources, LLC

Court	San Diego
Case No.	37-2018-00058078-CU-OE-CTL 3:18-CV-02852-BEN-MSB
Nature	Overtime and Meal and Rest Breaks
Status	Settled

14. Charles Ornelas v. C&A Transportation Services

Court	San Diego
Case No.	37-2018-00061289-CU-OE-CTL
Nature	Minimum Wage and Meal/Rest Break claims
Status	Settled

15. Luz Marin v. California Marine Cleaning

Court	San Diego
Case No.	37-2018-00063483-CU-OE-CTL
Nature	Meal Break claims
Status	Settled

16. Christian Van Cleave v. Sunrise Senior Living Management

Court	San Diego
Case No.	37-2018-00061960-CU-OE-CTL 19CV0044BEN NLS
Nature	Regular rate and meal premium miscalculation
Status	Settled

17. Heather McIntyre v. JRR Enterprises

Court	Sacramento
Case No.	34-2019-00251220
Nature	Overtime and Meal and Rest Periods
Status	Settled

18. Lori Phipps v. Soapy Joe's

Court	San Diego
Case No.	37-2019-00017673-CU-OE-CTL
Nature	Tip Polling and Meal and Rest Periods
Status	Settled

19. Heather Broughton v. NFG San Francisco, LLC

Court	San Francisco
Case No.	CGC-19-574657
Nature	Meal and Rest Breaks
Status	Settled

20. Marcos Antonios v. Interface Rehab, LLC

Court	Orange County
Case No.	30-2019-01067547-CU-OE-CXC
Nature	Meal and Rest Breaks and Reporting Time Violations
Status	Settled

21. Tiffany Rodriguez v. Circle K

Court	Riverside
Case No.	RIC 1901407 5:19-cv-00469
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

22. Derik Scott et al. v. Ultimate Performance

Court	Los Angeles
Case No.	19STCV22823
Nature	Piece Rate Pay violations
Status	Settled

23. Raymond Frazier v. Asa Carlton

Court	San Diego
Case No.	37-2019-00036147-CU-OE-CTL
Nature	Overtime Wages
Status	Settled

24. John Moreno v. Da Kitchen

Court	San Diego
Case No.	37-2019-00024885-CU-OE-CTL
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

25. Penny Lane v. International Aero Clubs, LLC

Court	San Diego
Case No.	37-2019-00021793-CU-OE-CTL
Nature	Meal and Rest Breaks and Regular Rate Miscalculation
Status	Settled

26. Amber Price v. DMSD Restaurants

Court	San Diego
Case No.	37-2019-00024062-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

27. Jamaal Johnson v. Volt Management Corp

Court	Los Angeles
Case No.	19STCV16466
Nature	On Duty Meal Break violations
Status	Settled

28. Ezzat Menias v. All American Private Security

Court	Orange County
Case No.	30-2019-01085120-CU-OE-CXC
Nature	On Duty Meal Break violations
Status	Settled

29. Mark Connor v. Ascendant Marketing

Court	San Diego
Case No.	37-2019-00026864-CU-OE-CTL
Nature	Minimum Wage violations
Status	Settled

30. Niki Nunez v. Home Depot

Court	San Joaquin
Case No.	STK-CV-406-2019-6656
Nature	Overtime Wages violations
Status	Settled

31. Alma Salazar v. Frontier Toyota

Court	Los Angeles
Case No.	19STCV20382
Nature	Rest Break violations
Status	Settled

32. Josefina Garces v. Kar Auction Services

Court	Los Angeles
Case No.	19STCV28489
Nature	Rest Break violations
Status	Settled

33. Madison Weiss v. Niznik Behavior

Court	San Diego
Case No.	37-2019-00039441-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

34. Jimmy Mack v. ERM Enterprises

Court	Sacramento
Case No.	2019-00262259
Nature	Meal and Rest Break violations
Status	Settled

35. Josefina Garces v. DriverDo

Court	Los Angeles
Case No.	19STCV32773
Nature	Independent Contractor Misclassification
Status	In Litigation

36. Perseus Porras v. Tantalum Restaurant

Court	Los Angeles
Case No.	19STCV31015
Nature	Unpaid Wages + Missed Meal/Rest Breaks
Status	Settled

37. Dorcena Deutsch v. Scripps

Court	San Diego
Case No.	37-2019-00036333-CU-OE-CTL
Nature	Regular Rate Miscalculation for Nurses
Status	Settled

38. Josalyn O'Quinn v. Laugh Factory

Court	Los Angeles
Case No.	19STCV28155
Nature	Regular Rate Miscalculation, Wage Theft
Status	In Litigation

39. Nicholas Leon v. Miller Event Management

Court	San Luis Obispo
Case No.	19CV-0435
Nature	Meal/Rest Breaks, Reporting Time, 2802
Status	Settled

40. Aaris Watts v. TRL Systems

Court	Orange County
Case No.	30-2019-01102457-CU-OE-CXC
Nature	Meal/Rest Breaks, Reporting Time
Status	In Litigation

41. Faith Smith v. Island Pizza

Court	Contra Costa
Case No.	MSC19-01654
Nature	Meal/Rest Breaks, 226, 2802
Status	Settled

42. Johnathan Roa v. Otay Mesa Sales

Court	San Diego
Case No.	37-2019-00057735-CU-OE-CTL
Nature	Meal/Rest Breaks, 226
Status	In Litigation

43. Sabrina Ivon v. Sinclair Television of California

Court	Humboldt
Case No.	DR190699
Nature	Vaquero
Status	In Litigation

44. Jonathan Mitchell v. Mack Trucking

Court	San Bernardino
Case No.	CIVDS1928334
Nature	Independent Contractor Misclassification
Status	In Litigation

45. Curtis Edwards v. Resolve Group

Court	San Francisco
Case No.	CGC-19-579095
Nature	Meal & Rest Breaks + 2802
Status	In Litigation

46. Elena Kiseleva v. TotalMed Staffing, Inc

Court	Santa Clara
Case No.	19CV354635
Nature	Overtime + Meal and Rest Breaks
Status	Settled

47. Richard Jer Vang v. Bridge Property Management

Court	Alameda
Judge	Winfred Smith
Nature	Off the clock work, regular rate miscalc.
Status	Settled

48. Madison Marrero v. Stat Med

Court	Alameda
Case No.	HG19043214
Nature	Unpaid Overtime + Meal/Rest Breaks
Status	In Litigation

49. Brian Reyes v. Stowasser Buick-GMC

Court	Santa Barbara
Case No.	19CV06183
Nature	Vaquero
Status	Settled

50. Erik Foss v. Anderson Hospitality, Inc.

Court	Shasta
Case No.	195317
OPC	Wood Smith – Andrew Kleiner
Nature	Meal and Rest Breaks, Regular Rate
Status	In Litigation

51. Griselda Duran v. EmployBridge

Court	Kern
Case No.	BCV-20-101583
Nature	Regular Rate, 226
Status	In Litigation

52. Luis Rendon v. Healthcare Investments, Inc.

Court	Los Angeles
Case No.	20STCV39775
Nature	Meal and Rest Breaks
Status	In Litigation

53. Richard Melead v. TVI, Inc.

Court	Orange
Case No.	30-2020-01140887-CU-OE-CXC
Nature	Regular Rate, 226 (Magadia)
Status	In Litigation

54. David Spencer v. Asset Gas, Inc.

Court	San Diego
Case No.	37-2020-00024642-CU-OE-CTL
Nature	Meal and Rest Breaks
Status	Settled

55. Thomas Haven v. California Vocations, Inc.

Court	Butte
Case No.	20CV01514
Nature	Regular Rate + Meal and Rest Breaks
Status	In Litigation

56. Estefania Renteria v. Love's Country

Court	Kern
Case No.	BCV-20-101260
Nature	226
Status	In Litigation

57. Rachel Latin v. OneMain General Services Corp.

Court	Stanislaus
Case No.	CV-20-002498
Nature	Dart + Magadia
Status	In Litigation

58. Kalaina Dula v. 2 Kings Gaming, Inc.

Court	Merced
Case No.	#20CV-02289
Nature	Meal and Rest Breaks
Status	In Litigation

59. Jie Xu v. HT Multinational

Court	San Bernardino
Case No.	CIV-DS2015679
Nature	Exempt Misclassification
Status	In Litigation

60. Yvette Molina v. Hawaiian Airlines

Court	Los Angeles
Case No.	20STCV28079
Nature	Meal and Rest + Magadia
Status	In Litigation

61. Reinald Pillsbury v. T & T Restaurants CA

Court	Del Norte
Case No.	CVUJ-2020-1214
Nature	Meal/Rest Breaks + Regular Rate
Status	Settled

62. Luis de Jesus v. Guardian Angel Home Care

Court	San Diego
Case No.	37-2020-00021049-CU-OE-CTL
Nature	Piece-Rate
Status	In Litigation

63. Charles Sandlin v. Secure Nursing Services, Inc.

Court	Los Angeles
Case No.	20STCV25675
Nature	Regular Rate
Status	Settled

64. Gabriel Mendez v. Bondz, Inc.

Court	San Joaquin
Case No.	STK-CV-UOE-2020-0007486
Nature	Piece-Rate
Status	In Litigation

65. James Conley v. Siskiyou Forest Products

Court	Shasta
Case No.	195819
Nature	Regular Rate and Meal/Rest Breaks + 226
Status	In Litigation

66. Alex Castellanos v. Southwest Patrol

Court	San Diego
Case No.	37-2020-00024905-CU-OE-CTL
Nature	Augutus
Status	In Litigation

67. Damien Hampton v. Pegasus Investors

Court	Sacramento
Case No.	34-2020-00281394-CU-BT-GDS
Nature	Unlawful Housing
Status	In Litigation

68. Tamara Perkins v. FSEI

Court	Sacramento
--------------	------------

Case No.	34-2020-00287054
Nature	Regular Rate
Status	In Litigation

69. Rodney Stovall v. Javelin Logistics Company

Court	Alameda
Case No.	RG20075705
Nature	Meal / Rest Breaks
Status	In Litigation

70. Gabrielle Boyd v. Bluestone Lane Holdings, LLC

Court	San Francisco
Case No.	CGC-20-585787
Nature	Tip Pooling ; Magadia
Status	In Litigation

71. Elias Kaser v. Aviation Consultants, Inc.

Court	Orange County
Case No.	
Nature	Meal / Rest Breaks, Regular Rate
Status	Settled

72. Christopher Chacon v. Panda Motors, Inc.

Court	San Bernardino
Case No.	CIV DS2022220
Nature	Regular Rate
Status	In Litigation

73. Willie Lang v. Pathways

Court	San Diego
Case No.	37-2019-00049969
Nature	Off the Clock
Status	In Litigation

74. Norma Reyes v. Simpson Garden Grove, Inc.

Court	Orange
Case No.	30-2020-0117564-CU-OE-CJC
Nature	Meal / Rest Breaks
Status	Settled

75. Daniel Jacobs v. Rush Media Company

Court	Los Angeles
Case No.	20STCV32350
Nature	Independent Contractor Misclassification
Status	In Litigation

76. Luis Ledesma v. TVJ Sons I, Inc.

Court	Santa Barbara
Case No.	20CV03573
Nature	Vaquero
Status	In Litigation

77. Kevin Cianfarani v. Career Strategies Temporary, Inc. (MPI)

Court	Los Angeles
Case No.	
Nature	Off the clock work
Status	Settled

78. Hector Avitia v. LAZ Parking

Court	San Diego
Case No	37-2020-00030133-CU-OE-CTL
Nature	Magadia + Augustus
Status	In Litigation

79. Sukhraj Kaur v. ACES 2020, LLC

Court	Contra Costa
Case No.	C20-02482
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

80. Boaventura v. Rei Do Gado

Court	Contra Costa
Case No.	37-2020-00032342-CU-OE-CTL
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

81. James Rachal v. ELG Metals, Inc.

Court	Los Angeles
Case No.	20STCV45861
Nature	Meal/Rest Breaks, Regular Rate
Status	In Litigation

82. Evelyn Nwansi v. Princeton Healthcare Center, LLC

Court	Alameda
Case No.	RG20083664
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

83. Michael Ashlock v. Advantis Medical Staffing

Court	San Diego
Case No.	37-2020-00022305-CU-OE-CTL
Nature	Regular Rate
Status	Settled

84. Moe Popal v. Ameriprise Auto & Home Insurance

Court	Riverside
Case No.	RIC2000006
Nature	Exempt/Non-Exempt Misclassification
Status	Settled

85. Mark Williams v. Web to Door

Court	San Francisco
Case No.	
Nature	Meal and Rest Break + Regular Rate
Status	In Litigation

86. Jessica Barackman v. Teaz N Pleaz, Inc.

Court	El Dorado
Case No.	SC20200179
Nature	Meal/Rest Breaks, Seating
Status	In Litigation

87. Nicolas Neutall v. Urban Alchemy

Court	San Francisco
Case No.	CGC-20-588622
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

EXHIBIT 4



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

July 31, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

AVIATION CONSULTANTS, INC.
c/o NATHAN J ROSS
945 AIRPORT DR.
SAN LUIS OBISPO CA 9340

ACI JET ORANGE COUNTY, LLC
c/o NATHAN ROSS
945 AIRPORT DR
SAN LUIS OBISPO CA 93401

ACI JET SLO COUNTY, LLC
c/o NATHAN J. ROSS
945 AIRPORT DR.
SAN LUIS OBISPO CA 93401

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents ELIAS KASER (“Plaintiff”) and other aggrieved employees in an action against AVIATION CONSULTANTS, INC., ACI JET ORANGE COUNTY, LLC, and ACI JET SLO COUNTY, LLC (“Defendants”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendants in California from November 2018 to March 2020. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendants failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay. Defendants also failed to provide Plaintiff with suitable seating.

As a consequence, Plaintiff contends that Defendants failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Defendant also failed to provide Plaintiff and similarly situated aggrieved employees with complete wage statements that included the address of Defendant. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, California Code of Regulations, Title 8, Section 1 1070(14), and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and is therefore actionable pursuant to section 2698 *et seq.*

A copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants. Plaintiff therefore incorporates the allegations of the attached proposed Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,



Shani O. Zakay
Attorney at Law

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047; Facsimile: (858) 404-9203

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)599-8292; Facsimile: (619) 599-8291

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE**

ELIAS KASER on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

v.

AVIATION CONSULTANTS, INC. a
California Corporation; ACI JET ORANGE
COUNTY, LLC, a Limited Liability
Company; ACI JET SLO COUNTY, LLC, a
Limited Liability Company; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF
CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 1194,
1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 510, *et*
seq;
- 4) FAILURE TO PROVIDE REQUIRED MEAL
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION
OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB. CODE
§§ 201, 202 AND 203; and
- 8) VIOLATION OF CALIFORNIA LABOR
CODE § 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 1
1070(14) (FAILURE TO PROVIDE
SEATING); and
- 9) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *et seq*.

DEMAND FOR A JURY TRIAL

Plaintiff ELIAS KASER, an individual, ("PLAINTIFF"), on behalf of himself and all

1 other similarly situated current and former employees, allege on information and belief,
2 except for their own acts and knowledge which are based on personal knowledge, the following:

3 **PRELIMINARY ALLEGATIONS**

4 1. Defendant AVIATION CONSULTANTS, INC. (“Defendant ACI”) is a
5 California Corporation and at all relevant times mentioned herein conducted and continues to
6 conduct substantial and regular business throughout California. Defendant ACI JET ORANGE
7 COUNTY, LLC (“Defendant ACI OC”) is a Limited Liability Company and at all relevant
8 times mentioned herein conducted and continues to conduct substantial and regular business
9 throughout California. Defendant ACI JET SLO COUNTY, LLC (“Defendant ACI SLO”) is a
10 Limited Liability Company and at all relevant times mentioned herein conducted and continues
11 to conduct substantial and regular business throughout California.

12 2. Defendant ACI, Defendant ACI OC, and Defendant ACI SLO were the joint
13 employers of PLAINTIFF as evidenced by the contracts signed and by the company the
14 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers
15 for the conduct alleged herein and collectively referred to herein as “DEFENDANTS”.

16 3. DEFENDANTS, doing business as “ACI Jet,” are an aircraft management and
17 private jet charter provider.

18 4. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt
19 employee entitled to minimum wages, overtime pay and meal and rest periods from November
20 of 2018 to March of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
21 DEFENDANT as a non-exempt employee paid on an hourly basis.

22 5. PLAINTIFF bring this Class Action on behalf of himself and a California class,
23 defined as all individuals who are or previously were employed by Defendant ACI and/or
24 Defendant ACI OC and/or Defendant ACI SLO in California and classified as non-exempt
25 employees (the “CALIFORNIA CLASS”) at any time during the period beginning April 6, 2016
26 and ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”).
27 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under
28 five million dollars (\$5,000,000.00).

1 6. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANT'S uniform policy and practice
4 which failed to lawfully compensate these employees for all their time worked.
5 DEFENDANT'S uniform policy and practice alleged herein is an unlawful, unfair and
6 deceptive business practice whereby DEFENDANTS retained and continue to retain wages due
7 to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
8 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
9 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
10 CALIFORNIA CLASS who have been economically injured by DEFENDANT'S past and
11 current unlawful conduct, and all other appropriate legal and equitable relief.

12 7. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
14 unknown to PLAINTIFF who therefore sue these Defendants by such fictitious names pursuant
15 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
16 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
17 PLAINTIFFS are informed and believes, and based upon that information and belief allege, that
18 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
19 responsible in some manner for one or more of the events and happenings that proximately
20 caused the injuries and damages hereinafter alleged

21 8. The agents, servants and/or employees of the Defendants and each of them acting
22 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
23 agent, servant and/or employee of the Defendants, and personally participated in the conduct
24 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
25 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
26 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
28 Defendants' agents, servants and/or employees.

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time 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. From time to time, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break. PLAINTIFF was often interrupted by work assignments during his breaks. Indeed there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and overtime compensation by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT'S business records.

10. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period each workday in which these employees were required by DEFENDANT to work ten (10) hours of work. When they were afforded compliant meal periods, PLAINTIFF and the other CALIFORNIA CLASS Members were required to remain on-call and on-duty throughout their break. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice

1 11. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
2 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
3 without being provided ten (10) minute rest periods. Further, these employees were denied their
4 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
5 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
6 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
7 minutes for some shifts worked of ten (10) hours or more. When they did have an opportunity to
8 take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
9 remain on the premises, on-call and on duty, and subject to DEFENDANT's control, and were
10 required to keep their walkie-talkies on at all times. PLAINTIFF and other CALIFORNIA
11 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of
12 their rigorous work schedules, and because they often worked single-staffed shifts, PLAINTIFF
13 and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by
14 DEFENDANTS and DEFENDANTS' managers.

15 12. From time to time, when PLAINTIFF and other CALIFORNIA CLASS
16 Members missed meal and rest breaks, or when they worked during what was supposed to be
17 their meal breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of
18 the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
19 among other things, the correct time and overtime worked, including, work performed in excess
20 of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty
21 payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer
22 shall furnish each of his or her employees with an accurate itemized wage statement in writing
23 showing, among other things, gross wages earned and all applicable hourly rates in effect during
24 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the
25 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
26 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
27 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
28 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

1 13. State law provides that employees must be paid overtime a at one-and-one-half
2 times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 14. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
6 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
7 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
8 performance for DEFENDANTS. The non-discretionary incentive program provided all
9 employees paid on an hourly basis with incentive compensation when the employees met the
10 various performance goals set by DEFENDANTS. However, when calculating the regular rate
11 of pay in order to pay overtime and missed meal premiums to PLAINTIFF and other
12 CALIFORNIA CLASS Members, DEFENDANTS failed to include the incentive compensation
13 as part of the employees’ “regular rate of pay” for purposes of calculating overtime pay and
14 missed meal premium pay. Management and supervisors described the incentive program to
15 potential and new employees as part of the compensation package. As a matter of law, the
16 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
17 must be included in the “regular rate of pay.” The failure to do so has resulted in a systematic
18 underpayment of overtime compensation and meal premium pay to PLAINTIFF and other
19 CALIFORNIA CLASS Members by DEFENDANTS. This uniform policy and practice of
20 DEFENDANTS was intended to purposefully avoid the payment of the correct overtime
21 compensation as required by California law and the Fair Labor Standards Act which allowed
22 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
23 with the law.

24 15. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
26 matter of company policy, practice and procedure, intentionally and knowingly failed to
27 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct
28 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is

1 intended to purposefully avoid the payment of the correct overtime compensation as required by
2 California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
3 over competitors who complied with the law. To the extent equitable tolling operates to toll
4 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
5 PERIOD should be adjusted accordingly.

6 16. By reason of this uniform conduct applicable to PLAINTIFF and all
7 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
8 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
9 *seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
10 accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
11 CALIFORNIA CLASS Members. The proper recording of these employees’ missed meal and
12 rest breaks is the DEFENDANT’S burden. As a result of DEFENDANT’S intentional disregard
13 of the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
14 required compensation for work performed by the members of the CALIFORNIA CLASS and
15 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

16 17. PLAINTIFF further alleges that the work area in DEFENDANTS’ facilities
17 provides ample space to allow for the presence and use of a stool or seat by DEFENDANTS’
18 employees’ during the performance of their work duties. DEFENDANTS’ employees’ working
19 at DEFENDANTS’ facilities spend a substantial portion of their working time at these facilities.
20 The nature of the position can reasonably be accomplished while using a seat/stool.

21 18. In violation of the applicable sections of the California Labor Code and the
22 requirements of the applicable Industrial Welfare Commission (“IWC”) Wage Order,
23 DEFENDANTS as a matter of company policy, practice and procedure, intentionally,
24 knowingly and systematically failed to provide PLAINTIFF and the other Aggrieved Employees
25 suitable seating when the nature of these employees’ work reasonably permitted sitting.

26 19. DEFENDANTS knew or should have known that PLAINTIFF and other
27 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not
28 interfere with the performance of their duties, and that DEFENDANTS did not provide suitable

1 seating and/or did not allow them to sit when it did not interfere with the performance of their
2 duties. By reason of this conduct applicable to PLAINTIFF and all Aggrieved Employees,
3 DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-2001, Section
4 14 by failing to provide suitable seats.

5 20. Specifically as to PLAINTIFF'S pay, he was from time to time unable to take off
6 duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
7 Instead, PLAINTIFF often had to remain on-call and on duty for his meal and rest breaks.
8 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
9 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
10 provide PLAINTIFF with a second off-duty meal period each workday in which he was
11 required by DEFENDANTS to work ten (10) hours of work. PLAINTIFF therefore forfeited
12 meal and rest breaks without additional compensation and in accordance with DEFENDANTS'
13 strict corporate policy and practice. DEFENDANTS also provided PLAINTIFF with paystubs
14 that failed to accurately display payments for missed meal and rest periods for certain pay
15 periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid
16 PLAINTIFFS all wages still owed to them or any penalty wages owed to them under Cal. Lab.
17 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum
18 or value of \$75,000.

19 **JURISDICTION AND VENUE**

20 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
21 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
22 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
23 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

24 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
25 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
26 maintained offices and facilities in this County and/or conducts substantial business in this
27 County, and (ii) committed the wrongful conduct herein alleged in this County against members
28 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

THE CALIFORNIA CLASS

23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by Defendant ACI and/or Defendant ACI OC and/or Defendant ACI SLO in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning April 6, 2016 and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

24. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

25. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly calculate and record all meal and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work.

26. DEFENDANT have the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law, so as to satisfy their burden. This common business practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions

1 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
2 claim.

3 27. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
4 CLASS Members is impracticable.

5 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
6 California law by:

- 7 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
8 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
9 company policies, practices and procedures that failed to pay all wages due the
10 CALIFORNIA CLASS for all time worked;
- 11 b. Committing an act of unfair competition in violation of the California Unfair
12 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
13 provide mandatory meal and/or rest breaks to PLAINTIFFS and the
14 CALIFORNIA CLASS members; and
- 15 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
16 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
17 company policies, practices and procedures that uniformly and systematically
18 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
19 CLASS for all time worked, including minimum wages owed and overtime
20 wages owed for work performed by these employees;

21 29. The Class Action meets the statutory prerequisites for the maintenance of a Class
22 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 23 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
24 joinder of all such persons is impracticable and the disposition of their claims as
25 a class will benefit the parties and the Court;
- 26 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
27 raised in this Complaint are common to the CALIFORNIA CLASS will apply
28 uniformly to every member of the CALIFORNIA CLASS;

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
3 of the CALIFORNIA CLASS, were classified as a non- exempt employee paid
4 on an hourly basis who was subjected to the DEFENDANTS’ deceptive practice
5 and policy which failed to provide the legally required meal and rest periods to
6 the CALIFORNIA CLASS and thereby systematically underpaid compensation
7 to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic
8 injury as a result of DEFENDANTS’ employment practices. PLAINTIFF and the
9 members of the CALIFORNIA CLASS were and are similarly or identically
10 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
11 misconduct engaged in by DEFENDANTS; and
- 12 d. The representative PLAINTIFF will fairly and adequately represent and protect
13 the interest of the CALIFORNIA CLASS, and has retained counsel who are
14 competent and experienced in Class Action litigation. There are no material
15 conflicts between the claims of the representative PLAINTIFF and the members
16 of the CALIFORNIA CLASS that would make class certification inappropriate.
17 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
18 CALIFORNIA CLASS Members.

19 30. In addition to meeting the statutory prerequisites to a Class Action, this action is
20 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 21 a. Without class certification and determination of declaratory, injunctive, statutory
22 and other legal questions within the class format, prosecution of separate actions
23 by individual members of the CALIFORNIA CLASS will create the risk of:
- 24 i. Inconsistent or varying adjudications with respect to individual members
25 of the CALIFORNIA CLASS which would establish incompatible
26 standards of conduct for the parties opposing the CALIFORNIA CLASS;
27 and/or;
28

1 ii. Adjudication with respect to individual members of the CALIFORNIA
2 CLASS which would as a practical matter be dispositive of interests of
3 the other members not party to the adjudication or substantially impair or
4 impede their ability to protect their interests.

5 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
6 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
7 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
8 DEFENDANTS uniformly failed to pay all wages due for all time worked by the
9 members of the CALIFORNIA CLASS as required by law;

10 i. With respect to the First Cause of Action, the final relief on behalf of the
11 CALIFORNIA CLASS sought does not relate exclusively to restitution
12 because through this claim PLAINTIFF seeks declaratory relief holding
13 that the DEFENDANT's policy and practices constitute unfair
14 competition, along with declaratory relief, injunctive relief, and incidental
15 equitable relief as may be necessary to prevent and remedy the conduct
16 declared to constitute unfair competition;

17 c. Common questions of law and fact exist as to the members of the CALIFORNIA
18 CLASS, with respect to the practices and violations of California law as listed
19 above, and predominate over any question affecting only individual
20 CALIFORNIA CLASS Members, and a Class Action is superior to other
21 available methods for the fair and efficient adjudication of the controversy,
22 including consideration of:

23 i. The interests of the members of the CALIFORNIA CLASS in
24 individually controlling the prosecution or defense of separate actions in
25 that the substantial expense of individual actions will be avoided to
26 recover the relatively small amount of economic losses sustained by the
27 individual CALIFORNIA CLASS Members when compared to the
28

1 substantial expense and burden of individual prosecution of this
2 litigation;

3 ii. Class certification will obviate the need for unduly duplicative litigation
4 that would create the risk of:

5 1. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS, which would establish
7 incompatible standards of conduct for the DEFENDANTS;
8 and/or;

9 2. Adjudications with respect to individual members of the
10 CALIFORNIA CLASS would as a practical matter be dispositive
11 of the interests of the other members not parties to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests;

14 iii. In the context of wage litigation, because a substantial number of
15 individual CALIFORNIA CLASS Members will avoid asserting their
16 legal rights out of fear of retaliation by DEFENDANTS, which may
17 adversely affect an individual's job with DEFENDANTS or with a
18 subsequent employer, the Class Action is the only means to assert their
19 claims through a representative; and

20 iv. A class action is superior to other available methods for the fair and
21 efficient adjudication of this litigation because class treatment will
22 obviate the need for unduly and unnecessary duplicative litigation that is
23 likely to result in the absence of certification of this action pursuant to
24 Cal. Code of Civ. Proc. § 382.

25 31. The Court should permit this action to be maintained as a Class Action pursuant
26 to Cal. Code of Civ. Proc. § 382 because:

27 a. The questions of law and fact common to the CALIFORNIA CLASS
28 predominate over any question affecting only individual CALIFORNIA CLASS

Members because the DEFENDANTS' employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.

- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANTS; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANTS as to the members of the
2 CALIFORNIA CLASS.

3 32. DEFENDANTS maintain records from which the Court can ascertain and
4 identify by job title each of DEFENDANTS' employees who as have been systematically,
5 intentionally and uniformly subjected to DEFENDANTS' company policy, practices and
6 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
7 any additional job titles of similarly situated employees when they have been identified.

8 **THE CALIFORNIA LABOR SUB-CLASS**

9 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
10 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
11 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
12 SUB-CLASS") at any time during the period beginning April 6, 2017 and ending on the date as
13 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
14 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
15 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

16 34. DEFENDANTS, as a matter of company policy, practice and procedure, and in
17 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
18 requirements, and the applicable provisions of California law, intentionally, knowingly, and
19 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
20 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
21 LABOR SUB-CLASS, and other wages and premiums owed to these employees, even though
22 DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and
23 permitted or suffered to permit this overtime work. DEFENDANTS have uniformly denied
24 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
25 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
26 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
27 DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
28 accordingly.

1 35. DEFENDANTS maintain records from which the Court can ascertain and
2 identify by name and job title, each of DEFENDANTS' employees who have been
3 systematically, intentionally and uniformly subjected to DEFENDANTS' company policy,
4 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
5 to include any additional job titles of similarly situated employees when they have been
6 identified.

7 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
8 CALIFORNIA LABOR SUB-CLASS Members is impracticable

9 37. Common questions of law and fact exist as to members of the CALIFORNIA
10 LABOR SUB-CLASS, including, but not limited, to the following:

- 11 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
12 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
13 missed meal and rest breaks in violation of the California Labor Code and
14 California regulations and the applicable California Wage Order;
- 15 b. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
16 overtime compensation due to members of the CALIFORNIA LABOR SUB-
17 CLASS in violation of the California Labor Code and California regulations and
18 the applicable California Wage Order;
- 19 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members
20 of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
21 thirty (30) minute meal breaks and rest periods;
- 22 d. Whether DEFENDANTS failed to provide PLAINTIFF and the other members
23 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
24 statements;
- 25 e. Whether DEFENDANTS have engaged in unfair competition by the above-listed
26 conduct;
- 27 f. The proper measure of damages and penalties owed to the members of the
28 CALIFORNIA LABOR SUB-CLASS; and

1 g. Whether DEFENDANTS' conduct was willful.

2 38. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
3 under California law by:

4 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay
5 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all
6 wages due for overtime worked, for which DEFENDANTS are liable pursuant to
7 Cal. Lab. Code § 1194;

8 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
9 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
10 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
11 Cal. Lab. Code §§ 1194 and 1197;

12 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
13 and the other members of the CALIFORNIA CLASS with all legally required
14 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
15 rest breaks;

16 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
17 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
18 statement in writing showing all accurate and applicable overtime rates in effect
19 during the pay period and the corresponding amount of time worked at each
20 overtime rate by the employee;

21 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
22 employee is discharged or quits from employment, the employer must pay the
23 employee all wages due without abatement, by failing to tender full payment
24 and/or restitution of wages owed or in the manner required by California law to
25 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
26 their employment.

27 39. This Class Action meets the statutory prerequisites for the maintenance of a
28 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT'S practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANTS' employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANTS; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

40. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 1 a. Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions
3 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
4 the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual members
6 of the CALIFORNIA LABOR SUB-CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA LABOR SUB-CLASS; or
- 9 ii. Adjudication with respect to individual members of the CALIFORNIA
10 LABOR SUB-CLASS which would as a practical matter be dispositive of
11 interests of the other members not party to the adjudication or
12 substantially impair or impede their ability to protect their interests.
- 13 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
14 refused to act on grounds generally applicable to the CALIFORNIA LABOR
15 SUB-CLASS, making appropriate class-wide relief with respect to the
16 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS
17 uniformly failed to pay all wages due for all time worked by the members of the
18 CALIFORNIA LABOR SUB-CLASS as required by law;
- 19 c. Common questions of law and fact predominate as to the members of the
20 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
21 violations of California Law as listed above, and predominate over any question
22 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
23 Class Action is superior to other available methods for the fair and efficient
24 adjudication of the controversy, including consideration of:
- 25 i. The interests of the members of the CALIFORNIA LABOR SUB-
26 CLASS in individually controlling the prosecution or defense of separate
27 actions in that the substantial expense of individual actions will be
28 avoided to recover the relatively small amount of economic losses

1 sustained by the individual CALIFORNIA LABOR SUB-CLASS
2 Members when compared to the substantial expense and burden of
3 individual prosecution of this litigation;

4 ii. Class certification will obviate the need for unduly duplicative litigation
5 that would create the risk of:

6 1. Inconsistent or varying adjudications with respect to individual
7 members of the CALIFORNIA LABOR SUB-CLASS, which
8 would establish incompatible standards of conduct for the
9 DEFENDANTS; and/or,

10 2. Adjudications with respect to individual members of the
11 CALIFORNIA LABOR SUB-CLASS would as a practical matter
12 be dispositive of the interests of the other members not parties to
13 the adjudication or substantially impair or impede their ability to
14 protect their interests;

15 iii. In the context of wage litigation because a substantial number of
16 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
17 asserting their legal rights out of fear of retaliation by DEFENDANTS,
18 which may adversely affect an individual's job with DEFENDANTS or
19 with a subsequent employer, the Class Action is the only means to assert
20 their claims through a representative; and,

21 iv. A class action is superior to other available methods for the fair and
22 efficient adjudication of this litigation because class treatment will
23 obviate the need for unduly and unnecessary duplicative litigation that is
24 likely to result in the absence of certification of this action pursuant to
25 Cal. Code of Civ. Proc. § 382.

26 41. This Court should permit this action to be maintained as a Class Action pursuant
27 to Cal. Code of Civ. Proc. § 382 because:
28

- 1 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
2 CLASS predominate over any question affecting only individual CALIFORNIA
3 LABOR SUB-CLASS Members;
- 4 b. A Class Action is superior to any other available method for the fair and efficient
5 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
6 CLASS because in the context of employment litigation a substantial number of
7 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
8 their rights individually out of fear of retaliation or adverse impact on their
9 employment;
- 10 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
11 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
12 CLASS before the Court;
- 13 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
14 not be able to obtain effective and economic legal redress unless the action is
15 maintained as a Class Action;
- 16 e. There is a community of interest in obtaining appropriate legal and equitable
17 relief for the acts of unfair competition, statutory violations and other
18 improprieties, and in obtaining adequate compensation for the damages and
19 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
20 LABOR SUB-CLASS;
- 21 f. There is a community of interest in ensuring that the combined assets of
22 DEFENDANT are sufficient to adequately compensate the members of the
23 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 24 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
25 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
26 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 27 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
28 ascertainable from the business records of DEFENDANTS. The CALIFORNIA

LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and

- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

42. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

43. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

44. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

45. By the conduct alleged herein, DEFENDANTS have engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and

1 1198, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
2 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
3 constitute unfair competition, including restitution of wages wrongfully withheld.

4 46. By the conduct alleged herein, DEFENDANTS' practices were unlawful and
5 unfair in that these practices violated public policy, were immoral, unethical, oppressive
6 unscrupulous or substantially injurious to employees, and were without valid justification or
7 utility for which this Court should issue equitable and injunctive relief pursuant to Section
8 17203 of the California Business & Professions Code, including restitution of wages wrongfully
9 withheld.

10 47. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
11 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
12 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
13 worked, failed to pay the correct overtime rate, and failed to provide duty-free meal and rest
14 periods, due to a systematic practice that cannot be justified, pursuant to the applicable Cal. Lab.
15 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
16 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to
17 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

18 48. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
19 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with
21 DEFENDANTS.

22 49. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
23 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
24 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

25 50. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
27 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
28

1 for each workday in which a second off-duty meal period was not timely provided for each ten
2 (10) hours of work.

3 51. PLAINTIFF further demands on behalf of himself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
5 was not timely provided as required by law.

6 52. By and through the unlawful and unfair business practices described herein,
7 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them
9 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
10 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
11 compete against competitors who comply with the law.

12 53. All the acts described herein as violations of, among other things, the Industrial
13 Welfare Commission Wage Orders, the California Code of Regulations, and the California
14 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
15 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
16 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

17 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
21 unfair business practices, including earned but unpaid wages.

22 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
25 engaging in any unlawful and unfair business practices in the future.

26 56. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
28 of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated.

1 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to
4 engage in these unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**
7 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
9 **Defendants)**

10 57. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
11 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
12 of this Complaint.

13 58. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor
15 Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to
16 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
17 Members.

18 59. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
19 public policy, an employer must timely pay its employees for all hours worked.

20 60. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
21 commission is the minimum wage to be paid to employees, and the payment of a wage less than
22 the minimum so fixed is unlawful.

23 61. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
24 including minimum wage compensation and interest thereon, together with the costs of suit.

25 62. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
26 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
27 amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice
28 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS.

1 63. DEFENDANTS' uniform pattern of unlawful wage and hour practices
2 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
3 whole, as a result of implementing a uniform policy and practice that denies accurate
4 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS in regards to minimum wage pay.

6 64. In committing these violations of the California Labor Code, DEFENDANTS
7 inaccurately calculated the correct time worked and consequently underpaid the actual time
8 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
9 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other
10 benefits in violation of the California Labor Code, the Industrial Welfare Commission
11 requirements and other applicable laws and regulations.

12 65. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
14 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

15 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
17 they were entitled to, constituting a failure to pay all earned wages.

18 67. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
19 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS for the true time they worked, PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
22 injury in amounts which are presently unknown to them and which will be ascertained
23 according to proof at trial.

24 68. DEFENDANTS knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
26 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
28 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to
pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
correct minimum wages for their time worked.

1 69. In performing the acts and practices herein alleged in violation of California labor
2 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
3 time worked and provide them with requisite compensation, DEFENDANTS acted and continue
4 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
5 the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal
6 rights, or the consequences to them, and with the despicable intent of depriving them of their
7 property and legal rights, and otherwise causing them injury in order to increase company
8 profits at the expense of these employees.

9 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
11 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided
12 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
13 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
14 who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
15 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
16 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA
17 LABOR SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful,
18 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
19 CLASS Members are entitled to seek and recover statutory costs.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

22 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
24 **Defendants)**

25 71. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
27 of this Complaint.

28 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
bring a claim for DEFENDANTS' willful and intentional violations of the California Labor

1 Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to
2 properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
3 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
4 hours in any workweek.

5 73. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
6 public policy, an employer must timely pay its employees for all hours worked.

7 74. Cal. Lab. Code § 510 further provides that employees in California shall not be
8 employed more than eight (8) hours per workday and/or more than forty (40) hours per
9 workweek unless they receive additional compensation beyond their regular wages in amount
10 specified by law.

11 75. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
12 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
13 Code § 1198 further states that the employment of an employee for longer hours than those
14 fixed by the Industrial Welfare Commission is unlawful.

15 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
16 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANTS to work for
17 DEFENDANTS and were not paid for all the time they worked, including overtime work.

18 77. DEFENDANTS' uniform pattern of unlawful wage and hour practices
19 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
20 whole, as a result of implementing a uniform policy and practice that failed to accurately record
21 overtime worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS, and denied accurate compensation to PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the work performed in
24 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

25 78. In committing these violations of the California Labor Code, DEFENDANTS
26 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
27 violation of the California Labor Code, the Industrial Welfare Commission requirements and
28 other applicable laws and regulations.

1 79. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
2 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
3 receive full compensation for all overtime worked.

4 80. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
5 from the overtime requirements of the law. None of these exemptions are applicable to
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
7 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
8 to a valid collective bargaining agreement that would preclude the causes of action contained
9 herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of themselves and the
10 CALIFORNIA LABOR SUB-CLASS based on DEFENDANTS' violations of non-negotiable,
11 non-waivable rights provided by the State of California.

12 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
14 they were entitled to, constituting a failure to pay all earned wages.

15 82. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
16 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
17 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
18 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
20 to accurately record and pay using the applicable overtime rate as evidenced by
21 DEFENDANT's business records and witnessed by employees.

22 83. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
24 CLASS for the true time they worked, PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
26 injury in amounts which are presently unknown to them and which will be ascertained
27 according to proof at trial.

28 84. DEFENDANTS knew or should have known that PLAINTIFF and the other
members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
worked. DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
2 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to
3 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
4 applicable overtime rate.

5 85. In performing the acts and practices herein alleged in violation of California labor
6 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
7 all time worked and provide them with the requisite overtime compensation, DEFENDANTS
8 acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and
9 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
10 disregard for their legal rights, or the consequences to them, and with the despicable intent of
11 depriving them of their property and legal rights, and otherwise causing them injury in order to
12 increase company profits at the expense of these employees.

13 86. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
15 interest, statutory costs, as well as the assessment of any statutory penalties against
16 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable
17 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
18 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANTS'
19 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
20 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
21 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANTS' conduct as
22 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
23 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

24 //

25 //

26 //

27 //

28 //

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)**

5 87. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
6 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
7 paragraphs of this Complaint.

8 88. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed to provide
9 all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
10 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code.
11 The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
12 MEMBERS did not prevent these employees from being relieved of all of their duties for the
13 legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF
14 and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty
15 by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
16 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
17 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
18 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
19 therefore forfeited meal breaks without additional compensation and in accordance with
20 DEFENDANTS' strict corporate policy and practice.

21 89. DEFENDANTS further violated California Labor Code §§ 226.7 and the
22 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
23 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable
24 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
25 each workday that a meal period was not provided.

26 90. As a proximate result of the aforementioned violations, PLAINTIFF and
27 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
28 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

1
2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

4 **(Cal. Lab. Code §§ 226.7 & 512)**

5 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
6 **Defendants)**

7 91. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
8 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
9 paragraphs of this Complaint.

10 92. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
11 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
12 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
13 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
14 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
15 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
16 more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
17 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
18 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
19 denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

20 93. DEFENDANTS further violated California Labor Code §§ 226.7 and the
21 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
22 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
23 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
24 each workday that rest period was not provided.

25 94. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
27 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
28

1
2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
4 **(Cal. Lab. Code § 226)**

5 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and**
6 **against all Defendants)**

7 95. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
8 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
9 paragraphs of this Complaint.

10 96. Cal. Labor Code § 226 provides that an employer must furnish employees with
11 an “accurate itemized” statement in writing showing:

- 12 a. Gross wages earned;
- 13 b. Total hours worked by the employee, except for any employee whose
14 compensation is solely based on a salary and who is exempt from payment of
15 overtime under subdivision (a) of Section 515 or any applicable order of the
16 Industrial Welfare Commission;
- 17 c. The number of piece rate units earned and any applicable piece rate if the
18 employee is paid on a piece-rate basis;
- 19 d. All deductions, provided that all deductions made on written orders of the
20 employee may be aggregated and shown as one item;
- 21 e. Net wages earned;
- 22 f. The inclusive dates of the period for which the employee is paid;
- 23 g. The name of the employee and his or her social security number, except that by
24 January 1, 2008, only the last four digits of his or her social security number or
25 an employee identification number other than a social security number may be
26 shown on the itemized statement;
- 27 h. The name and address of the legal entity that is the employer; and
- 28 i. All applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee.

1 97. When DEFENDANTS did not accurately record PLAINTIFF's and other
2 CALIFORNIA CLASS Members' overtime rate, missed meal and rest breaks and wages owed,
3 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
4 CLASS with complete and accurate wage statements which failed to show, among other things,
5 missed meal and rest periods and the correct overtime wages owed to PLAINTIFF and other
6 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall
7 furnish each of his or her employees with an accurate itemized wage statement in writing
8 showing, among other things, gross wages earned and all applicable hourly rates in effect during
9 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the
10 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an
11 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
12 As a result, from time to time DEFENDANTS provided PLAINTIFF and the other members of
13 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

14 98. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
15 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
17 expended calculating the correct rates for the overtime worked and the amount of employment
18 taxes which were not properly paid to state and federal tax authorities. These damages are
19 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
20 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
21 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
22 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
23 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
24 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

25 //

26 //

27 //

28 //

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

3 **(Cal. Lab. Code §§201, 202, 203)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
5 **Defendants)**

6 99. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 100. Cal. Lab. Code § 200 provides that:

10 As used in this article:(a) "Wages" includes all amounts for labor performed by
11 employees of every description, whether the amount is fixed or ascertained by the
12 standard of time, task, piece, Commission basis, or other method of calculation.
13 (b) "Labor" includes labor, work, or service whether rendered or performed under
14 contract, subcontract, partnership, station plan, or other agreement if the labor to
15 be paid for is performed personally by the person demanding payment.

16 101. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
17 an employee, the wages earned and unpaid at the time of discharge are due and payable
18 immediately."

19 102. Cal. Lab. Code § 202 provides, in relevant part, that:

20 If an employee not having a written contract for a definite period quits his or her
21 employment, his or her wages shall become due and payable not later than 72
22 hours thereafter, unless the employee has given 72 hours previous notice of his or
23 her intention to quit, in which case the employee is entitled to his or her wages at
24 the time of quitting. Notwithstanding any other provision of law, an employee
25 who quits without providing a 72-hour notice shall be entitled to receive payment
26 by mail if he or she so requests and designates a mailing address. The date of the
27 mailing shall constitute the date of payment for purposes of the requirement to
28 provide payment within 72 hours of the notice of quitting.

29 103. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
30 SUB-CLASS Members' employment contract.

31 104. Cal. Lab. Code § 203 provides:

32 If an employer willfully fails to pay, without abatement or reduction, in
33 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
34 who is discharged or who quits, the wages of the employee shall continue as a

penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

105. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANTS have not tendered payment of wages, to these employees who missed meal and rest breaks, as required by law.

106. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE SUITABLE SEATING

(Cal. Lab. Code §§1198 et seq. & California Code of Regulations, Title 8, Section 11070(14))

(Alleged by PLAINTIFF against all Defendants)

107. PLAINTIFF, and the other members of the AGGRIEVED EMPLOYEES, reallege and incorporate by this reference, as though fully set forth herein, all paragraphs of this Complaint.

108. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order.

109. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful. California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

110. California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the

1 work requires standing, an adequate number of suitable seats shall be placed in reasonable
2 proximity to the work area and employees shall be permitted to use such seats when it does not
3 interfere with the performance of their duties."

4 111. DEFENDANT violated California Labor Code section 1198 and California Code
5 of Regulations, Title 8, section 11070(14) because PLAINTIFF and AGGRIEVED EMPLOYEES
6 members were not permitted to sit, even if they were not engaged in active duties. They were not
7 permitted to sit, even when it would not interfere with the performance of their duties, nor were
8 they provided with suitable seats.

9 112. PLAINTIFF and AGGRIEVED EMPLOYEES members are entitled to recover all
10 remedies available for violations of California Labor Code section 1198 and California Code of
11 Regulations, Title 8, section 11070(14)

12 113. Pursuant to the civil penalties provided for in California Labor Code sections
13 2699 (f) and (g), the State of California, PLAINTIFF and other aggrieved employees are entitled
14 to recover civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay
15 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
16 pay period for each subsequent violation, plus costs and attorneys' fees for violation of
17 California Labor Code section 1198.

18 **NINTH CAUSE OF ACTION**

19 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

20 **[Cal. Lab. Code §§ 2698 et seq.]**

21 **(Alleged by PLAINTIFF against all Defendants)**

22 114. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
23 herein, the prior paragraphs of this Complaint.

24 115. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who does so as the proxy or agent of
26 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
27 fundamentally a law enforcement action designed to protect the public and not to benefit private
28 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In

1 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
2 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
3 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
4 subject to arbitration.

5 116. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, bring this Representative Action on behalf of the State of California with respect to herself
8 and all individuals who are or previously were employed by DEFENDANT BBSI and/or
9 DEFENDANT ISLAND PIZZA and classified as non-exempt employees in California during
10 the time period of _____ until the present (the "AGGRIEVED EMPLOYEES").

11 117. On _____, PLAINTIFF gave written notice by certified mail to the
12 Labor and Workforce Development Agency (the "Agency") and the employer of the
13 specific provisions of this code alleged to have been violated as required by Labor Code §
14 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
15 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
16 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
17 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
18 to all AGGRIEVED EMPLOYEES as herein defined.

19 118. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because Defendant (a) failed to pay PLAINTIFF and other
21 AGGRIEVED EMPLOYEES minimum wages and overtime wages at the correct rate, (b) failed
22 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest
23 breaks, (c) failed to provide accurate itemized wage statements, (d) failed to timely pay wages,
24 and (e) failed to provide suitable seating, all in violation of the applicable Labor Code sections
25 listed in Labor Code §2699.5, including but not limited to Labor Code §§ §§ 201, 201.3, 202,
26 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
27 1197.14, 1198, 1199, and applicable wage orders, California Code of Regulations, Title 8,
28 Section 1 1070(14) (Failure to Provide Seating), and thereby gives rise to statutory penalties as

1 a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by
2 the Labor Code Private Attorney General Act of 2004 as the representative of the State of
3 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES.

5 119. Some or all of the conduct and violations alleged herein occurred during the
6 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
7 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
8 that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30
9 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal.
10 App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one
11 Labor Code violation committed by an employer—to pursue penalties for all the Labor Code
12 violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

13 **PRAYER FOR RELIEF**

14
15 WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and
16 severally, as follows:

17 1. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
19 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
20 b. An order temporarily, preliminarily and permanently enjoining and restraining
21 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
22 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
23 withheld from compensation due to PLAINTIFF and the other members of the
24 CALIFORNIA CLASS; and
25 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
26 for restitution of the sums incidental to DEFENDANTS' violations due to
27 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
28

1 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

2 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
3 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
4 action pursuant to Cal. Code of Civ. Proc. § 382;

5 b. Compensatory damages, according to proof at trial, including compensatory
6 damages for minimum wages, overtime wages, and other compensation due to
7 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
8 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest
9 thereon at the statutory rate;

10 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
11 the applicable IWC Wage Order;

12 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
13 which a violation occurs and one hundred dollars (\$100) per member of the
14 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
15 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
16 an award of costs for violation of Cal. Lab. Code § 226; and

17 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
18 CLASS as a penalty from the due date thereof at the same rate until paid or until
19 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

20 3. On behalf of the State of California and with respect to all AGGRIEVED
21 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private
22 Attorneys General Act of 2004

23 //

24 //

25 //

26 //

27 //

28 //

1 4. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
- 5 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
- 6 and/or §1197.

7

8 DATED: _____, 2020

9

10 **ZAKAY LAW GROUP, APLC**

11

12

13 By: _____

14 Shani O. Zakay

15 Attorney for Plaintiff

16

17 **DEMAND FOR A JURY TRIAL**

18 PLAINTIFFS demand a jury trial on issues triable to a jury.

19

20 DATED: _____, 2020

21

22 **ZAKAY LAW GROUP, APLC**

23

24 By: _____

25 Shani O. Zakay

26 Attorney for Plaintiff

27

28

EXHIBIT 5



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #29901

July 31, 2020

Via Regular Mail

Department of Industrial Relations

Accounting Unit

455 Golden Gate Avenue, 10th Floor

San Francisco, CA 94102

**Re: Elias Kaser, et al. v. Aviation Consultants, Inc. et al.
LWDA Case No. LWDA-CM-800909-20**

Dear Sir/Madam:

Please find enclosed herewith the \$75 filing fee for the filing of a new PAGA claim notice. A true and correct copy of the PAGA Notice associated with this fee is attached hereto as **Exhibit #1**.

If you have any questions or concerns, please do not hesitate to contact me at the below number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized, flowing script.

Shani O. Zakay
Attorney for Elias Kaser

WARNING: Do not accept this document unless you can see a true watermark and visible lines from both sides.

Zakay Law Group, APLC

3990 Old Town Ave., Ste C204

San Diego, CA 92110

001146

Date

7/31/2020

16-3776/1220

830

PAY
TO THE
ORDER OF

WVDA

\$ 75⁰⁰

Seventy Five 00/100

DOLLARS



First Citizens Bank

FOR

2990 PACA Fee

[Signature]



Security logo of bank
included. Details on back

⑈001146⑈ ⑆122037760⑆001064446292⑈



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

July 31, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

AVIATION CONSULTANTS, INC.
c/o NATHAN J ROSS
945 AIRPORT DR.
SAN LUIS OBISPO CA 9340

ACI JET ORANGE COUNTY, LLC
c/o NATHAN ROSS
945 AIRPORT DR
SAN LUIS OBISPO CA 93401

ACI JET SLO COUNTY, LLC
c/o NATHAN J. ROSS
945 AIRPORT DR.
SAN LUIS OBISPO CA 93401

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents ELIAS KASER (“Plaintiff”) and other aggrieved employees in an action against AVIATION CONSULTANTS, INC., ACI JET ORANGE COUNTY, LLC, and ACI JET SLO COUNTY, LLC (“Defendants”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendants in California from November 2018 to March 2020. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendants failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay. Defendants also failed to provide Plaintiff with suitable seating.

As a consequence, Plaintiff contends that Defendants failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Defendant also failed to provide Plaintiff and similarly situated aggrieved employees with complete wage statements that included the address of Defendant. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, California Code of Regulations, Title 8, Section 1 1070(14), and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and is therefore actionable pursuant to section 2698 *et seq.*

A copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants. Plaintiff therefore incorporates the allegations of the attached proposed Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,



Shani O. Zakay
Attorney at Law

EXHIBIT 6

Tesla Stone

From: FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, June 17, 2021 1:16 PM
To: Leilani Edmonds
Subject: Thank you for your Court Complaint Submission.

06/17/2021 01:15:59 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 7