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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN JOAQUIN

11 BELINDA PAYTON, individually, and on  
12 behalf of other members of the general public  
similarly situated,

13 Plaintiff,

14 vs.

15 PRIDE INDUSTRIES, a California corporation;  
16 and DOES 1 through 10, inclusive,

17 Defendants.  
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Case No.: STK-UOE-2017-7110

**NOTICE OF MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT; MEMORANDUM  
OF POINTS AND AUTHORITIES**

Date(s): July 14, 2020  
July 15, 2020  
July 21, 2020

Time: 9:00 a.m.  
Place: Department 10-B

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on TBD at 9:00 a.m., or as soon thereafter as counsel may be  
3 heard, in Department 10-D of the above-captioned court, located at 180 E. Weber Avenue, Stockton,  
4 California 95202, the Honorable Barbara Kronlund presiding, Plaintiffs Belinda Payton and Charmaine  
5 Walker will, and hereby do, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class Action  
7 Settlement and Release, attached as Exhibit 1 to the Declaration of Raul Perez;
- 8 2. Grant Plaintiff leave to file the First Amended Complaint for settlement purposes;
- 9 3. Conditionally certify the proposed Settlement Class;
- 10 4. Appoint Belinda Payton and Charmaine Walker as the representatives for the Settlement  
11 Class;
- 12 5. Appoint Capstone Law APC as Class Counsel;
- 13 6. Approve distribution of the proposed Notice of Class Action Settlement to the  
14 Settlement Class;
- 15 7. Appoint CPT Group, Inc. as the Settlement Administrator; and
- 16 8. Set a hearing date for final approval of the settlement.

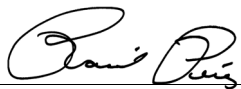
17 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of  
18 Points and Authorities in support of Motion for Preliminary Approval of Class Action Settlement; (3) the  
19 Declaration of Raul Perez; (4) the Joint Stipulation of Class Action Settlement and Release attached as  
20 Exhibit 1 to the Declaration of Raul Perez; (5) the Notice of Class Action Settlement attached as Exhibit  
21 A to the Joint Stipulation of Class Action Settlement and Release; (6) the proposed First Amended  
22 Complaint attached as Exhibit 2 to the Declaration of Raul Perez; (7) the [Proposed] Order Granting  
23 Preliminary Approval of Class Action Settlement; (8) the records, pleadings, and papers filed in this  
24 action; and (9) upon such other documentary and oral evidence or argument as may be presented to the  
25 Court at or prior to the hearing of this Motion. As this Motion is unopposed, the Parties respectfully  
26 request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

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Dated: May 12, 2020

Respectfully submitted,

By: \_\_\_\_\_

Raul Perez  
Brandon Brouillette  
Brooke W. Waldrop  
**CAPSTONE LAW APC**

Attorney for Plaintiffs Belinda Payton and Charmaine Walker

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiffs Belinda Payton and Charmaine Walker (collectively, “Plaintiffs”) seek preliminary approval of the Joint Stipulation of Class Action Settlement and Release,<sup>1</sup> which if approved, would provide considerable monetary relief for approximately 700 current and former employees of Defendant PRIDE Industries (“Defendant” or “Pride”) (collectively with Plaintiffs, the “Parties”). The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a Settlement Class defined as: All persons who were employed by Defendant in non-exempt positions at the California Department of Corrections and Rehabilitation (“CDCR”) in Stockton, California at any time during the period from January 1, 2016 through the date of Preliminary Approval of the Settlement Agreement (“Class Members”).
- (2) As a condition of settlement, the Parties will stipulate to the filing of a First Amended Complaint (“FAC”) to conform the pleadings with the scope of the Settlement and Released Claims and the definition of Class Period, and to name Charmaine Walker as an additional Named Plaintiff and Class Representative. Defendant will not be required to file an answer or other responsive pleading to the FAC.
- (3) A **non-reversionary** Class Settlement Amount of \$650,000. The Class Settlement Amount includes:
  - (a) A Net Settlement Amount of approximately \$339,333 (the Class Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency [“LWDA”], and the Class Representative Enhancement Payments), which will be allocated to all Class Members on a pro-rata basis according to the number of weeks each Class Member worked during the Class Period. **The Entire Net Settlement Amount will be paid to all Class**

<sup>1</sup> Hereinafter “Settlement Agreement” or “Settlement.” Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

**Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**

- (b) Attorneys' fees in the amount of one-third of the Class Settlement Amount (or \$216,667), and litigation costs and expenses not to exceed \$30,000, to Capstone Law APC ("Plaintiffs' Counsel").
- (c) A \$37,500 payment to the LWDA pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA").
- (d) Settlement administration costs of approximately \$11,500, to be paid to the jointly selected Settlement Administrator, CPT Group, Inc.
- (e) Class Representative Enhancement Payments of \$10,000 to Belinda Payton and \$5,000 to Charmaine Walker for their service on behalf of the Settlement Class, the risks they took in litigating the Action on behalf of the class, and for general releases of all claims arising out of their employment with Defendant.

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class' behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length following two mediations with the Hon. Richard Hodge (Ret.), an experienced and well-respected class action mediator, and the Settlement confers substantial benefits to Class Members. This relief—averaging approximately \$485 per Class Member from the Net Settlement Amount—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial, or of Plaintiffs prevailing at trial but losing on appeal.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement Agreement.

## **II. FACTS AND PROCEDURE**

### **A. Brief Overview of the Litigation**

Pride is one of the nation's largest non-profits that provides outsourcing for the manufacturing

1 and service needs of Fortune 500 companies and government agencies. Pride operates in 14 states and  
2 employs more than 5,600 employees nationwide.

3 Plaintiff Payton worked for Pride as a non-exempt, hourly-paid Environmental Services  
4 Technician and Environmental Services Floor Foreperson (custodian/custodian lead) at the CDCR from  
5 January 25, 2016 to July 18, 2016. Plaintiff Walker worked for Pride as a non-exempt, hourly paid  
6 Environmental Technician at the CDCR from around July 2015 to June 2019.

7 In their proposed First Amended Complaint, Plaintiffs allege that Defendant systemically  
8 violated the California Labor Code<sup>2</sup> by failing to: (1) pay overtime (Sections 510 and 1198); (2) pay  
9 minimum wages (Sections 1194, 1197, and 1197.1); (3) provide meal periods (sections 226.7 and  
10 512(a)); (4) provide rest periods (Section 226.7); (5) provide and maintain compliant wage statements  
11 (Sections 226(a) and 1174(d)); (6) pay wages upon termination (Sections 201, 202, and 203); (7) pay  
12 wages during employment (Section 204); (8) reimburse business expenses (Section 2802). Based on the  
13 preceding Labor Code violations, Plaintiffs also allege that Defendant: (1) is liable for civil penalties  
14 under the PAGA; and (2) maintained unlawful and unfair business practices, in violation of California  
15 Business & Professions Code sections 17200, *et seq.* (Declaration of Raul Perez [“Perez Decl.”] Ex. 2.)

16 **B. Plaintiffs’ Counsel Conducted a Thorough Investigation of the Factual and Legal**  
17 **Issues and Were Thus Able to Objectively Assess the Settlement’s Reasonableness**

18 Beginning shortly after counsel were retained to represent Ms. Payton (and later, Ms. Walker),  
19 and continuing over the next 2.5 years until a settlement in principle was reached, Plaintiffs’ Counsel  
20 conducted a thorough investigation of the factual and legal issues. (Perez Decl. ¶ 2.)

21 At the outset of the litigation, Ms. Payton (and later Ms. Walker) provided Plaintiffs’ Counsel  
22 with a detailed summary of her experiences working for Defendant, how Defendant’s policies and  
23 practices were instituted on a daily basis, and the circumstances that gave rise to the alleged Labor Code  
24 violations. In addition to informing Plaintiffs’ Counsel’s initial evaluation of the lawsuit, the information  
25 that Ms. Payton provided also influenced Plaintiffs’ Counsel’s discovery efforts, including written  
26 discovery and lines of inquiry at deposition. (Perez Decl. ¶ 3.)

27  
28 <sup>2</sup> Unless indicated otherwise, further statutory references are to the California Labor Code.

1 In response to their discovery requests, Plaintiffs' Counsel received a large number of  
2 documents and information, including employee demographic data and Defendant's written labor  
3 policies. Plaintiffs' Counsel analyzed several thousand pages of policy documents, and were able to  
4 persuasively pinpoint the problematic policies and procedures that ultimately would have formed the  
5 backbone of the motion for class certification. The document and data exchanges allowed Plaintiffs'  
6 Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments  
7 to recovery, so as to make an independent assessment of the reasonableness of the terms to which the  
8 parties have agreed. (Perez Decl. ¶ 4.)

9 In addition to written discovery, Plaintiffs' Counsel deposed Defendant's corporate designee,  
10 Tina Oliveira (Vice President of Human Resources). This deposition provided considerable evidence  
11 concerning, *inter alia*, the strengths and weaknesses of the claims. Plaintiffs' Counsel also defended Ms.  
12 Payton's deposition. (Perez Decl. ¶ 5.)

13 In summary, Plaintiffs' Counsel performed a thorough investigation into the claims at issue,  
14 which included: (1) determining Plaintiffs' suitability as private attorneys general and class  
15 representatives through interviews, background investigations, and analyses of their employment files  
16 and related records; (2) evaluating all of Plaintiffs' potential representative claims; (3) researching similar  
17 wage and hour class actions as to the claims brought, the nature of the positions, and the type of  
18 employer; (4) analyzing Defendant's employment policies and practices; (5) researching settlements in  
19 similar cases; (6) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of  
20 settlement; (7) drafting the mediation brief; and (8) participating in the mediation. (Perez Decl. ¶ 6.)

21 By engaging in such a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs'  
22 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement  
23 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all  
24 known facts and circumstances, including the risk of significant delay and uncertainty associated with  
25 litigation, and various defenses asserted by Defendant. (Perez Decl. ¶ 7.)

### 26 **C. The Parties Settled After Two Mediations**

27 On January 16, 2018, the Parties participated in full-day mediation with the Hon. Richard Hodge  
28 (Ret.), an experienced mediator of wage and hour class actions. Judge Hodge helped to manage the

Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. Although the Parties did not settle at their first mediation, Judge Hodge helped to narrow the gap between the Parties' respective positions. (Perez Decl. ¶ 8.)

On September 27, 2019, the Parties participated in a second full-day mediation, also with Judge Hodge. With Judge Hodge's expert guidance, the Parties were able to negotiate a complete settlement of Plaintiffs' claims. The terms of the settlement are now set forth in complete and final form in the Joint Stipulation of Class Action Settlement and Release. (Perez Decl. ¶ 9, Ex. 1.) At all times, the Parties' negotiations were adversarial and non-collusive. The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at issue.

As a condition of settlement, the Parties have stipulated to the filing of the FAC to conform the pleadings with the scope of the Settlement and Released Claims and the definition of Class Period, and to name Charmaine Walker as an additional Named Plaintiff and Class Representative. (Perez Decl. ¶ 10, Ex. 2.)

#### **D. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

##### **1. Composition of the Settlement Class**

The proposed Settlement Class consists of all persons who were employed by Defendant in non-exempt positions at the CDCR in Stockton, California during the period from January 1, 2016 through the date of Preliminary Approval. (Settlement Agreement ¶ 5.) There are approximately 700 Class Members.

##### **2. Settlement Consideration**

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for the Class Settlement Amount of \$650,000. The Class Settlement Amount includes: (1) automatic payments to all Participating Class Members—meaning, all Class Members except those who submit timely and valid Requests for Exclusion—from the Net Settlement Amount; (2) \$216,667 in attorneys' fees (i.e., one-third of the common fund) and up to \$30,000 in litigation costs to Plaintiffs' Counsel; (3) Settlement Administration Costs of approximately \$11,500; (4) a \$37,500 payment to the LWDA; and (5) Class Representative Enhancement Payments for Plaintiffs' service on behalf of the Settlement Class, the risks they took in bringing they representative claims, and for releases of all claims arising out of their

1 employment with Defendant. (Settlement Agreement ¶¶ 3, 8-9, 15, 27.)

2 Subject to the Court approving Attorneys' Fees and Costs, Settlement Administration Costs, the  
3 payment to the LWDA, and the Class Representative Enhancement Payments, the Net Settlement  
4 Amount will be distributed to Participating Class Members in full. (Settlement Agreement ¶ 16.)

5 **3. Formula for Calculating Payments from the Net Settlement Amount**

6 Each Class Member's share of the Net Settlement Amount will be proportional to the number  
7 of weeks he or she worked during the Class Period. (Settlement Agreement ¶ 37.) The Settlement  
8 Administrator will calculate Individual Settlement Payments as follows:

- 9 • Defendant will calculate the total number of Workweeks worked by each Class Member  
10 during the Class Period and the aggregate total number of Workweeks worked by all  
11 Class Members during the Class Period.
- 12 • To determine each Class Member's estimated "Individual Settlement Payment," the  
13 Settlement Administrator will use the following formula: The Net Settlement Amount  
14 will be divided by the aggregate total number of Workweeks, resulting in the  
15 "Workweek Value." Each Class Member's "Individual Settlement Payment" will be  
16 calculated by multiplying each individual Class Member's total number of Workweeks  
17 by the Workweek Value.
- 18 • The Individual Settlement Payment will be reduced by any required deductions for each  
19 Participating Class Members as specifically set forth herein, including employee-side tax  
20 withholdings or deductions.
- 21 • The entire Net Settlement Amount will be disbursed to all Class Members who do not  
22 submit timely and valid Requests for Exclusion. If there are any valid and timely  
23 Requests for Exclusion, the Settlement Administrator shall proportionately increase the  
24 Individual Settlement Payment for each Participating Class Member according to the  
25 number of Workweeks worked, so that the amount actually distributed to the Settlement  
26 Class equals 100% of the Net Settlement Amount.

27 (Settlement Agreement ¶ 37(a)-(d).)

28 Given that there are approximately 700 Class Members, the average net recovery will be

approximately \$485. This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

#### 4. Release by the Settlement Class

In exchange for the Class Settlement Amount, Plaintiffs and Participating Class Members will agree to release the Released Claims during the Class Period:

All claims, rights, demands, liabilities, and causes of action, arising from, or related to, the same set of operative facts as those set forth in the operative complaint during the Class Period, including: (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay wages upon termination based on the preceding claims; (v) all claims for the failure to timely pay wages during employment based on the preceding claims; (vi) all claims for wage statement violations based on the preceding claims; (vii) all claims for the failure to reimburse for necessary business expenses; and (viii) all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 2698, et seq. based on the preceding claims, including any and all associated claims for penalties, premium pay, liquidated damages, interest, attorney fees and costs.

(Settlement Agreement ¶ 23.)

### III. ARGUMENT

#### A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

##### 1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and (2) a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”). The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of attorneys’ fees. *Id.* at 3.769(b).

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and “an explanation of the proposed settlement.” The court must also approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” *See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors “is small” (collectively, “Dunk Factors”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802

(1996).<sup>3</sup>

**2. Plaintiffs’ Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Were Thus Able to Objectively Assess the Settlement’s Reasonableness**

As set forth in greater detail above, based on their analysis of documents and class data produced by Defendant (including Defendant’s written labor policies and procedures), Plaintiffs’ Counsel were able to realistically assess the value of Plaintiffs’ claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Perez Decl. ¶¶ 2-6.)

By engaging in a thorough investigation and evaluation of Plaintiffs’ claims, Plaintiffs’ Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant. (Perez Decl. ¶ 7.)

**3. The Settlement Was Reached Through Arm’s-Length Bargaining in which All Parties Were Represented by Experienced Counsel**

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement’s fairness.” *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

<sup>3</sup> The presumption of fairness is consistent with California’s public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages litigation and encourages settlement [because settlements] can produce peace and goodwill in the community while reducing the expense and persistency of litigation”). Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties.” *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117. The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1118.

As explained above, the Parties participated in a mediation with the Hon. Richard Hodge (Ret.), an experienced mediator of wage and hour class actions. Judge Hodge helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"). At all times, the Parties' negotiations were adversarial and non-collusive. (Perez Decl. ¶¶ 8-9.)

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiffs are represented by Capstone Law APC. Plaintiffs' Counsel employ seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Perez Decl. ¶¶ 11-13, Ex. 3.)

Defendant is represented by Forrest & Becker Law Group, APC, a respected defense firm.

**B. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation**

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615,

628 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.<sup>4</sup>

Settling parties are not, however, required to partake in a hypothetical accounting exercise: “**Kullar does not ... require any such explicit statement of [maximum] value;** it requires a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As explained in detail below, the Class Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

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<sup>4</sup> Federal district courts also recognize that there is an inherent “range of reasonableness” in determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Id.* at 188, quoting *Newman v. Stein*, 464 F. 2d 689, 693 (2d Cir.). See *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008); see also *Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for Justice v. Civil Serv. Comm.*, 688 F. 2d 615, 628 (C.A. Cal. 1982) (it is “the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

| Defendant's Exposure for the Class Claims         |                |
|---------------------------------------------------|----------------|
| Off-the-Clock Claim <sup>5</sup>                  | \$296,510.00   |
| Meal Period Claim <sup>6</sup>                    | \$1,071,720.00 |
| Rest Period Claim <sup>7</sup>                    | \$1,250,340.00 |
| Business Expense Reimbursement Claim <sup>8</sup> | \$49,050.00    |
| Wage Statement Claim <sup>9</sup>                 | \$435,000.00   |
| Final Pay Claim <sup>10</sup>                     | \$408,000.00   |

<sup>5</sup> Plaintiffs allege that Defendant failed to pay employees for all hours worked prior to the start, and after the end, of each scheduled shift by requiring employees to undergo off-the-clock security inspections. These security inspections were done under the control of the employer and without compensation, in violation of California law. Defendant's alleged systematic failure to pay for all hours worked amounted to (conservatively) at least 5 minutes of unpaid time per shift. Defendant's total exposure would therefore be calculated as follows: 223,275 total shifts worked by all Class Members during the Class Period x \$16 / hour x 0.083 hours = \$296,510.

<sup>6</sup> As a result of the security inspections discussed above, Plaintiffs also allege that Defendant failed to provide compliant meal periods during the Class Period. Specifically, because employees were required to go through security when entering and leaving the building, and were allocated only 30 minutes for meal breaks, they could not leave the premises and still take a full 30-minute meal break. Conservatively estimating that Class Members left the premises during 30% of their shifts, Defendant's exposure would be calculated as follows: 223,275 total meal period-eligible shifts worked by all Class Members during the Class Period x \$16 / hour x 30% violation rate = \$1,071,720.

<sup>7</sup> Plaintiffs allege that Defendant failed to relieve Class Members of all duties during their rest periods by requiring them to respond to radio calls. Conservatively estimating that 35% of all rest periods were interrupted by radio calls, Defendant's maximum realistic exposure would therefore be calculated as follows: 223,275 total meal period-eligible shifts worked by all Class Members during the Class Period x \$16 / hour x 35% violation rate = \$1,250,340.

<sup>8</sup> Plaintiffs allege that Defendant did not reimburse employees for all necessary business expenses, including expenses related to maintain their uniforms. Based on interviews with Class Members and data gathered by Plaintiffs' Counsel, Class Members spent approximately \$75 on business expenses throughout their employment. Thus, Pride's potential damages with respect to this claim is \$49,050 (654 x \$75).

<sup>9</sup> Based on the preceding allegations, Plaintiffs allege that Defendant issued Class Members incorrectly itemized wage statements. Penalties for wage statement violations are calculated according to the formula provided by Labor Code section 226(e)(1): An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000). Defendant's maximum potential exposure would be calculated as follows: 435 employees employed during the one-year statute of limitations period x \$4,000 = \$1,740,000. However, this derivative wage statement claim is only as strong as the underlying predicate claims. Defendant also argued that to recover penalties for wage statement violations, Plaintiffs would have had to show that it knowingly and intentionally issued wage statements with unlawful deficiencies. *See* Lab. Code § 226; *Price v. Starbucks Corp.*, 192 Cal. App. 4th 1136, 1142-43 (2011). Given the contingent nature of the wage statement claim, and the strength of Defendant's defenses to all claims, Plaintiffs discounted Defendant's exposure by 75%, or to \$435,000.

<sup>10</sup> Based on the forgoing allegations, Plaintiffs allege that Defendant is liable for statutory penalties under Labor Code section 203. Section 203 provides that "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." Defendant's exposure would be as follows: 425 former employees x \$16/hour x 8 hours/day x 30 days = \$1,632,000. However, while Section 203 penalties are relatively straightforward to calculate, the analysis becomes more difficult for settlement purposes as derivative waiting-time penalties are only as strong as the underlying predicate

| Defendant's Exposure for the Class Claims |                |
|-------------------------------------------|----------------|
| Total                                     | \$3,510,620.00 |

This estimate assumes that each and every one of Plaintiffs' claims would have been certified for class-wide resolution, that Plaintiffs would have prevailed at trial, and that the jury's verdict would have been affirmed on appeal. In other words, this estimate assumes complete and total victory. Understandably, for purposes of evaluating the settlement's reasonableness, this estimate must be "tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

Ultimately, Plaintiffs' Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant's maximum theoretical liability by: (i) the strength of the defenses to the merits of Plaintiffs' claims; (ii) the risk of class certification being denied; (iii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiff's claims, or barred evidence/testimony in support of the claims; (iv) the risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors").

After taking into account the Discount Factors, Plaintiffs' Counsel determined that it would be reasonable to settle for a fraction of Defendant's maximum potential exposure for the class claims (PAGA discussed in the following section), or approximately 20%, which is essentially the product of the probability of: (i) certification being granted on **all claims** ( $\approx 60\%$ ); (ii) prevailing on summary judgment/motions in limine/renewed motions to deny certification on **all claims** ( $\approx 60\%$ ); (iii) prevailing at trial on **all of Plaintiffs' claims** ( $\approx 55\%$ ); i.e.,  $60\% \times 60\% \times 55\%$ .

claims, and are subject to good faith defenses. For example, Defendant argued that no waiting-time penalties can be awarded unless the failure to pay wages is "willful," an element that Plaintiff acknowledges would have been difficult to prove. *See* Cal. Code Regs. tit. 8, § 13520 ("[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due."). Given the contingent nature of the Section 203 claim, and the strength of Defendant's defenses to all claims, Plaintiffs discounted Defendant's exposure by 75%, or to \$408,000.

Such a discount is inherently reasonable given that Plaintiffs would have had to overcome **multiple, dependent** contingencies to prevail on his claims. If anything, the projected odds for each of the above contingencies is generous to the class' position, since plaintiffs in employment cases rarely prevail on **all of the claims** at any of these dispositive stages. Courts routinely approve settlements that provide a similar discounted range of the maximum potential recovery. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at \*5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).<sup>11</sup>

**C. The Consideration Provided for the PAGA Claim Is Fair and Reasonable In Light of the Amount in Controversy Discounted by the Risks of Continued Litigation**

Pursuant to the Settlement Agreement, \$50,000 from the Class Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$37,500) will be paid directly to the LWDA, and the remaining 25% (\$12,500) will be paid to Participating Class Members. (Settlement

<sup>11</sup> *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at \*23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at \*21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at \*4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at \*5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at \*2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

1 Agreement ¶ 15.)

2 This result was reached after good-faith negotiation between the Parties. The amount was valued  
3 as follows: Based on information and evidence produced by Defendant during discovery, Plaintiffs  
4 determined that aggrieved employees worked a combined total of approximately 19,010 pay periods  
5 during the PAGA statute of limitations period (“PAGA Period”). Statutory penalties would be calculated  
6 according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or  
7 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay  
8 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay  
9 period for each subsequent violation.

10 However, some courts have interpreted Labor Code section 2699(f)(2) to impose the enhanced  
11 “subsequent violation penalty” or “heightened penalty” only after an employer has been notified that its  
12 conduct violates the Labor Code. *See Trang v. Turbine Engine Components Technologies Corp.*, No.  
13 CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that  
14 employers are not subject to heightened penalties for subsequent violations unless and until a court or  
15 commissioner notifies the employer that it is in violation of the Labor Code”); *Amalgamated Transit*  
16 *Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL  
17 2448430 (S.D. Cal. 2009) (finding that California law imposes the “subsequent violation penalty” only  
18 after an employer has been notified its conduct violates the Labor Code). Defendant would also argue  
19 that penalties for claims could not be stacked on top of one another (which Plaintiffs dispute), thus  
20 greatly reducing the potential exposure.

21 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil  
22 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result  
23 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In  
24 reducing PAGA penalties, courts have considered issues including whether the employees suffered  
25 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s  
26 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)  
27 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d  
28 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL

7563047, at \*4 (C.D. Cal. Aug. 12, 2011).

For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—**or 0.21% of the maximum**—and stated that this reduction was warranted because imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply with meal period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at 529.

Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at \*4; *see also Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at \*5-\*7 (Cal. Ct. App. May 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven, remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at \*17 (N.D. Cal. June 15, 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at \*2-\*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous other PAGA claims).

Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved by California courts.<sup>12</sup> Where PAGA penalties are negotiated in good faith and “there is no

<sup>12</sup> *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at \*3 (E.D. Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575 at \*7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP,

1 indication that [the] amount was the result of self-interest at the expense of other Class Members,” such  
2 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009  
3 U.S. Dist. LEXIS 33900, at \*24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal.  
4 App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which  
5 does not allocate any damages to the PAGA claims.”).

6 **D. The Court Should Preliminarily Approve the Negotiated Class Representative**  
7 **Enhancement Payments**

8 Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee*  
9 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West*  
10 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) §  
11 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53  
12 UCLA L. Rev. 1303 (2006). Enhancement payments “are intended to compensate class representatives  
13 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing  
14 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”  
15 *Rodriguez*, 563 F.3d at 958–59. “[T]he rationale for making enhancement or incentive awards to named  
16 plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a  
17 benefit on other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th  
18 785, 806 (2009).

19 Approximately 700 current and former employees will share a \$650,000 settlement fund due  
20 entirely to the effort and commitment of Belinda Payton and Charmaine Walker. Subject to Court

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21 2011 WL 672645 at \*1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000  
22 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC  
23 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement  
24 fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties);  
25 *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane  
26 Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated  
27 to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County  
28 Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which  
approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta*  
*Food Enterprises, Inc.*, No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F.  
Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the  
settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County  
Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which  
\$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

1 approval, therefore, the Settlement provides for Class Representative Enhancement Payments of \$10,000  
2 to Ms. Payton and \$5,000 to Ms. Walker.<sup>13</sup> The Class Representative Enhancement Payments are fair

3  
4 <sup>13</sup> Such amounts are reasonable by reference to the amounts that California courts (both federal  
5 and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter*  
6 *v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000  
7 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146  
8 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named  
9 plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento  
10 County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff);  
11 *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016)  
12 (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*,  
13 No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the  
14 named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct.  
15 April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United*  
16 *Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costa County Super. Ct. April 15, 2016)  
17 (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire's Boutiques, Inc.*,  
18 No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 enhancement payments to the  
19 named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS  
20 (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 enhancement payment to the named  
21 plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16,  
22 2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Baker v. L.A. Fitness Int'l, LLC*,  
23 No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to  
24 three of the named plaintiffs); *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A.  
25 County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann*  
26 *Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement  
27 payments to the named plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County  
28 Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health*  
*Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement  
payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.  
Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No.  
BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the  
named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct.  
Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named plaintiffs); *Magee v.*  
*American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding  
\$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967  
(L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named  
plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010)  
(awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, L.P.*, No. BC386500 (L.A.  
County Super. Ct. Mar. 19, 2010) (awarding \$10,000 enhancement payments to the named plaintiffs);  
*Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013)  
(awarding \$10,000 enhancement payment); *Silva v. Catholic Mortuary Services, Inc.*, No. BC408054  
(L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named  
plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct.  
May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty, LLC*,  
No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the  
named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13,  
2011) (awarding \$10,000 enhancement payment); *Aguiar v. Cingular Wireless, LLC*, No. CV 06-8197  
DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v.*  
*Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding  
\$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San  
Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs);

1 and reasonable compensation for Plaintiffs' effort in pursuing the action, serving as private attorneys  
2 general under PAGA, assisting counsel with the litigation and settlement, being deposed (in the case of  
3 Ms. Payton), regularly conferring with counsel on the status of their case and the strategies for  
4 prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and  
5 provide adequate relief for the Settlement Class.

6 Plaintiffs will file a formal motion for the negotiated Class Representative Enhancement  
7 Payments once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the  
8 above showing is sufficient for preliminary approval of the negotiated Class Representative  
9 Enhancement Payments.

10 **E. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and**  
11 **Costs**

12 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took  
13 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.  
14 California courts routinely award attorneys' fees equalling one-third or more of the potential value of the  
15 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award  
16 representing one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11  
17 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method  
18 is used, fee awards in class actions average around one-third of the recovery."). At final approval,  
19 Plaintiffs will seek Court-approval of attorneys' fees of \$216,667 (one-third of the Class Settlement  
20 Amount) and \$30,000 in litigation costs.

21 **F. California Law Authorizes Provisional Certification for Settlement Purposes**

22 **1. The California Standard for Class Certification**

23 Class actions are statutorily authorized "when the question is one of common or general interest,

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24 *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012) (awarding \$10,000  
25 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super.  
26 Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*,  
27 No. CV08-03241 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment);  
28 *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24,  
2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos.  
BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000  
enhancement payment).

1 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the  
2 court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class  
3 certification is appropriate when there is an “ascertainable class and a well-defined community of interest  
4 among class members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class  
5 treatment is appropriate even if class members at some point may be required to make an individual  
6 showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193,  
7 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

8 Conditional certification of the proposed Settlement Class is particularly warranted here given  
9 the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford*  
10 *Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class  
11 certification in settlement cases).<sup>14</sup> In *Dunk*, the California Court of Appeal specifically rejected the  
12 argument that the standard for certifying a class for purposes of settlement is identical to the standard for  
13 certifying the same class for purposes of litigation:

14 Geer argues the court must use the same standard under Federal Rules of Civil  
15 Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation  
16 class certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for*  
17 *Justice v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading  
18 commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser  
19 standard of scrutiny for settlement cases . . . We agree with the latter. The two basic  
20 purposes for the Rule 23 certification requirements, as they relate to questions of a  
nationwide class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the  
interests of the non-representative class members. The first purpose is inapposite in the  
settlement context, and the second, as it relates to commonality of issues, only makes a  
difference if the non-representative class members would do much better by litigating on  
their own or in their own jurisdiction. The second category concerns are protected by the  
trial court’s fairness review of the settlement.

21 *Id.* at n19.

22  
23 <sup>14</sup> *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class  
24 certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification  
25 analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC,  
26 2016 WL 3549473, at \*6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in  
27 *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia,*  
28 *Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at \*4 (E.D. Pa. Apr. 6, 2016) (“[A] settlement class  
can be preliminarily certified based on a less rigorous analysis than that necessary for final  
certification.”); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, 2014 WL 828083, at \*2  
(E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage, “the Court must determine whether the  
proposed class should be conditionally certified, and leave the final certification decision for the Fairness  
Hearing.”).

1                                   **2.       The Proposed Settlement Class Is Ascertainable and There Is a Well-**  
2                                   **Defined Community of Interest Among Class Members**

3               Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is  
4       “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available  
5       for identifying class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where  
6       they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

7               The community of interest requirement embodies three factors: (1) predominant common  
8       questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a  
9       class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

10              In April of 2012, the California Supreme Court expounded on the element of predominance:

11                               The “ultimate question” the element of predominance presents is whether “the  
12                               issues which may be jointly tried, when compared with those requiring separate  
13                               adjudication, are so numerous or substantial that the maintenance of a class  
                                    action would be advantageous to the judicial process and to the litigants.”

14       *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

15              The proposed Settlement Class consists of all persons who were employed by Defendant in non-  
16       exempt positions at the CDCR in Stockton, California at any time during the period from January 1,  
17       2016 through the date of Preliminary Approval. Because all Class Members are either current or former  
18       employees of Defendant, the class is readily ascertainable from Defendant’s regular business records.

19              Here, common issues of fact and law predominate because the California statutes relating to  
20       each of Plaintiffs’ claims, and Defendant’s defenses thereto, apply with equal force and effect to all Class  
21       Members. Factually, Plaintiffs contend that Defendant’s policies and practices apply class-wide and  
22       Defendant’s liability can be determined by facts common to all members of the class. The wage and hour  
23       issues are both numerous and substantial, and a class action is the most advantageous method of dealing  
24       with the claims of the Settlement Class Members.

25              Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they arise  
26       from the same factual bases and are based on the same legal theories applicable to the other Class  
27       Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Class.  
28       Plaintiffs maintain that they were injured by the same company-wide practices to which the proposed

1 Settlement Class was subject and seek the same relief. Plaintiffs have already demonstrated their ability  
2 to advocate for the interests of the Class by initiating this litigation, undertaking representative discovery,  
3 and evaluating the proposed settlement to assure that it is fair.

4 Additionally, Plaintiffs are represented by competent counsel who have extensive experience in  
5 litigating wage and hour class action cases. (Perez Decl. ¶¶ 11-13, Ex. 3.) Plaintiffs' Counsel have  
6 successfully briefed, argued, certified, and gained state and federal court settlement approval of the same  
7 class-wide causes of action that are at issue in this case. (*Id.*) Plaintiffs' Counsel's wage and hour class  
8 action expertise establishes that they are well qualified to represent the interests of this Class.

9 A class action is superior to a multitude of individual lawsuits. Given the size and amount of  
10 each individual Class Member's claim, Class Members likely have little incentive to litigate their claims  
11 on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate  
12 each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-  
13 case adjudication.

14 **G. The Proposed Notice Properly Informs Class Members about the Case and the**  
15 **Settlement**

16 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*,  
17 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient  
18 information to decide whether they should accept the benefits offered, opt out and pursue their own  
19 remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App.  
20 3d 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the  
21 class if they so request and that they will be bound by the judgment, whether favorable or not, if they do  
22 not request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant  
23 number of class members, California authorities generally require service of the class notice by mail or  
24 similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal.  
25 App. 3d 960, 972 (1975).<sup>15</sup>

26  
27 <sup>15</sup> Due process does not require that each Class Member actually receive a notice, but rather a  
28 procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice*  
*and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be

1 The Parties have jointly drafted the Notice of Class Action Settlement (“Class Notice”) which  
2 fairly and neutrally informs Class Members of their rights and remedies in this action. The proposed  
3 Class Notice will be mailed to all Class Members by First Class mail and will include information  
4 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class  
5 definition, the procedure and time period within which to submit Requests for Exclusions or objections  
6 to the Settlement, the date for the final approval hearing, the formula used to calculate settlement  
7 payments, and the terms and scope of the Released Claims. (Settlement Agreement, Exhibit A.)

8 In the event Class Notices are returned as undeliverable, the Settlement Administrator will  
9 attempt to locate a current address using, among other resources, a skip-trace search. (Settlement  
10 Agreement ¶ 42.)

11 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice  
12 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v.*  
13 *Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class members of the  
14 terms of the proposed compromise and of the options open to dissenting class members.”).

#### 15 **IV. CONCLUSION**

16 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately  
17 presented the materials and information necessary for preliminary approval, the Parties request that the  
18 Court preliminarily approve the settlement.

19  
20 Dated: May 12, 2020

Respectfully submitted,

21 By: 

22 Raul Perez  
23 Brandon Brouillette  
24 Brooke W. Waldrop  
25 **CAPSTONE LAW APC**

26 Attorney for Plaintiffs Belinda Payton and Charmaine  
27 Walker

28 bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729,  
732 (7th Cir. 1987).

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7 Attorneys for Plaintiffs Belinda Payton and Charmaine Walker

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN JOAQUIN

11 BELINDA PAYTON, individually, and on  
12 behalf of other members of the general public  
similarly situated,

13 Plaintiff,

14 vs.

15 PRIDE INDUSTRIES, a California corporation;  
16 and DOES 1 through 10, inclusive,

17 Defendants.  
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Case No.: STK-UOE-2017-7110

**DECLARATION OF RAUL PEREZ IN  
SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date(s): July 14, 2020  
July 15, 2020  
July 21, 2020

Time: 9:00 a.m.  
Place: Department 10-B

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1 defended Ms. Payton's deposition.

2           6.       In summary, Plaintiffs' Counsel performed a thorough investigation into the claims at  
3 issue, which included: (1) determining Plaintiffs' suitability as private attorneys general and class  
4 representatives through interviews, background investigations, and analyses of their employment files  
5 and related records; (2) evaluating all of Plaintiffs' potential representative claims; (3) researching similar  
6 wage and hour class actions as to the claims brought, the nature of the positions, and the type of  
7 employer; (4) analyzing Defendant's employment policies and practices; (5) researching settlements in  
8 similar cases; (6) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of  
9 settlement; (7) drafting the mediation brief; and (8) participating in the mediation.

10           7.       By engaging in such a thorough investigation and evaluation of Plaintiffs' claims,  
11 Plaintiffs' Counsel can opine that the Settlement, for the consideration and on the terms set forth in the  
12 Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in  
13 light of all known facts and circumstances, including the risk of significant delay and uncertainty  
14 associated with litigation, and various defenses asserted by Defendant.

#### 15                           **THE PARTIES SETTLED AFTER TWO MEDIATIONS**

16           8.       On January 16, 2018, the Parties participated in full-day mediation with the Hon.  
17 Richard Hodge (Ret.), an experienced mediator of wage and hour class actions. Judge Hodge helped to  
18 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both  
19 sides. Although the Parties did not settle at their first mediation, Judge Hodge helped to narrow the gap  
20 between the Parties' respective positions.

21           9.       On September 27, 2019, the Parties participated in a second full-day mediation, also  
22 with Judge Hodge. With Judge Hodge's expert guidance, the Parties were able to negotiate a complete  
23 settlement of Plaintiffs' claims. The terms of the settlement are now set forth in complete and final form  
24 in the Joint Stipulation of Class Action Settlement and Release, attached as Exhibit 1. A copy of the Joint  
25 Stipulation of Class Action Settlement and Release has been e-filed with the LWDA. At all times, the  
26 Parties' negotiations were adversarial and non-collusive. The Settlement therefore constitutes a fair,  
27 adequate, and reasonable compromise of the claims at issue.

28           10.      As a condition of settlement, the Parties have stipulated to the filing of a First Amended

1 Complaint (“FAC”) to conform the pleadings with the scope of the Settlement and Released Claims and  
2 the definition of Class Period, and to name Charmaine Walker as an additional Named Plaintiff and  
3 Class Representative. The FAC is attached as Exhibit 2.

4 **CAPSTONE LAW APC FIRM PROFILE**

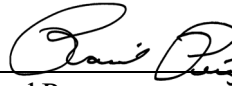
5 11. Capstone is one of California’s largest plaintiff-only labor and consumer law firms.  
6 With over twenty-five seasoned attorneys, Capstone has the experience, resources, and expertise to  
7 successfully prosecute complex employment and consumer actions.

8 12. Since its founding in 2012, Capstone has emerged as a major force in aggregate  
9 litigation, making law on cutting-edge issues and obtaining over \$200 million in recovery for employees  
10 and consumers. The firm’s accomplishments include:

- 11 a. In February 2015, Ryan H. Wu and I were honored with the prestigious California  
12 Lawyer of the Year (CLAY) award in labor and employment for our work in the  
13 landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348  
14 (2014), which preserved the right of California workers to bring representative  
15 actions under the Labor Code Private Attorneys General Act (“PAGA”)  
16 notwithstanding a representative action waiver in an arbitration agreement.
- 17 b. Recognized as a leading firm in the prosecution of PAGA enforcement actions,  
18 Capstone is responsible for some of the most important decisions in this area. In  
19 *Williams v. Superior Court (Marshalls of Calif.)*, 2017 WL 2980258, Capstone  
20 attorneys achieved a landmark decision before the California Supreme Court as to  
21 the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs.*  
22 *Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone  
23 attorneys successfully argued that PAGA actions are state enforcement actions not  
24 covered by the Class Action Fairness Act.

25 13. Attached as Exhibit 3 is a true and correct copy of Capstone’s firm resume.  
26  
27  
28

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct. Executed this 12th day of May, 2020, at Los Angeles, California.

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5 Raul Perez  
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# Exhibit 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN JOAQUIN

BELINDA PAYTON, individually, and on  
behalf of other members of the general public  
similarly situated,

Plaintiff,

vs.

PRIDE INDUSTRIES, a California corporation;  
and DOES 1 through 10, inclusive,

Defendants.

Case No.: STK-UOE-2017-7110

**JOINT STIPULATION OF CLASS ACTION  
SETTLEMENT AND RELEASE**

## JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiffs Belinda Payton and Charmaine Walker (“Plaintiffs” or “Class Representatives”), as individuals and on behalf of all others similarly situated, and Defendant PRIDE Industries (“Defendant”) (collectively with Plaintiffs, the “Parties”).

### DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Payton v. PRIDE Industries*, No. STK-UOE-2017-7110 (San Joaquin County Superior Court).

2. “Agreement,” “Stipulation,” or “Release” shall mean this Joint Stipulation of Class Action Settlement and Release, including any attached Exhibits.

3. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited to fees and expenses of experts, investigation expenses, postage, telephone, and photocopying charges, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Class Settlement Amount, or Two Hundred Sixteen Thousand Six Hundred Sixty Seven Dollars (\$216,667). The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, up to Thirty Thousand Dollars (\$30,000), subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set forth above.

4. “Class Counsel” means Capstone Law APC.

5. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator and to Class Counsel within twenty (20) calendar days after Preliminary Approval of this Settlement. The Class List

1 will be formatted in Microsoft Office Excel and will include each Class Member's full name; most  
2 recent mailing address and telephone number; Social Security number; dates of employment; the  
3 respective number of Workweeks that each Class Member worked during the Class Period; and any  
4 other relevant information needed to calculate settlement payments.

5 6. "Class Member(s)" or "Settlement Class" means all persons who were employed by  
6 Defendant in non-exempt positions at the California Department of Corrections and Rehabilitation  
7 ("CDCR") in Stockton, California during the Class Period.

8 7. "Class Period" means the period from January 1, 2016 through the date of Preliminary  
9 Approval of this Joint Stipulation of Class Action Settlement and Release.

10 8. "Class Representative Enhancement Payments" means the amounts to be paid to  
11 Plaintiffs in recognition of their effort and work in prosecuting the Action on behalf of Class Members,  
12 and for their general release of claims. Subject to the Court granting final approval of this Settlement  
13 Agreement and subject to the exhaustion of any and all appeals, Plaintiffs will request Court approval of  
14 Class Representative Enhancement Payments of Ten Thousand Dollars (\$10,000) to Belinda Payton and  
15 Five Thousand Dollars (\$5,000) to Charmaine Walker.

16 9. "Class Settlement Amount" means the Class Settlement Amount of Six Hundred Fifty  
17 Thousand Dollars (\$650,000), to be paid by Defendant in full satisfaction of all Released Claims arising  
18 from the Action, which includes all Individual Settlement Payments to Participating Class Members,  
19 Attorneys' Fees and Costs to Class Counsel, the Class Representative Enhancement Payments to  
20 Plaintiffs, the Labor and Workforce Development Agency Payment, and Settlement Administration  
21 Costs to the Settlement Administrator. This Class Settlement Amount has been agreed to by Plaintiffs  
22 and Defendant based on the aggregation of the agreed-upon settlement value of individual claims. In no  
23 event will Defendant be liable for more than the Class Settlement Amount. There will be no reversion of  
24 the Class Settlement Amount to Defendant. Defendant will be separately responsible for any employer  
25 payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall  
26 not be paid from the Class Settlement Amount.

27 10. "Court" means the San Joaquin County Superior Court.

28 11. "Defendant" means Defendant PRIDE Industries.

12. “Effective Date” means the later of: (i) if no timely objections are filed, or are withdrawn prior to Final Approval, then the date of Final Approval; or (ii) if a Class Member files an objection to the Settlement, the Effective Date shall be the sixty-first (61) calendar day after the date of Final Approval, provide no appeal is initiated by an objector; or (iii) if a timely appeal is initiated by an objector, then the Effective Date will be the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

13. “Final Approval” means the date on which the Court enters an order granting final approval of the Settlement Agreement.

14. “Individual Settlement Payment” means each Participating Class Member’s respective share of the Net Settlement Amount.

15. “Labor and Workforce Development Agency Payment” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that Fifty Thousand Dollars (\$50,000) of the Class Settlement Amount will be allocated to the resolution of Class Members’ claims arising under PAGA, Seventy-Five Percent (75%) of which, or Thirty Seven Thousand Five Hundred Dollars (\$37,500), will be paid to the California Labor and Workforce Development Agency, and Twenty-Five Percent (25%), or Twelve Thousand Five Hundred Dollars (\$12,500), will be included in the Net Settlement Amount.

16. “Net Settlement Amount” means the portion of the Class Settlement Amount remaining after deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement Payments, the Labor and Workforce Development Agency Payment, and Settlement Administration Costs. The Net Settlement Amount will be distributed to Participating Class Members. There will be no reversion of the Net Settlement Amount to Defendant.

17. “Notice of Objection” means a Class Member’s valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector’s full name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other documents upon which the objection is based; and (iv) a statement whether the objector intends to appear

1 at the final fairness hearing. Any Class Member who does not submit a timely written objection to the  
2 Settlement, or who fails to otherwise comply with the specific and technical requirements of this section,  
3 will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the  
4 Settlement, by appeal or otherwise.

5 18. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form  
6 attached as Exhibit A.

7 19. "Parties" means Plaintiffs and Defendant collectively.

8 20. "Participating Class Members" means all Class Members who do not submit timely and  
9 valid Requests for Exclusion.

10 21. "Plaintiffs" means Plaintiffs Belinda Payton and Charmaine Walker.

11 22. "Preliminary Approval" means the Court order granting preliminary approval of the  
12 Settlement Agreement.

13 23. "Released Claims" means all claims, rights, demands, liabilities, and causes of action,  
14 arising from, or related to, the same set of operative facts as those set forth in the operative complaint  
15 during the Class Period, including: (i) all claims for unpaid overtime; (ii) all claims for meal and rest  
16 break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay  
17 wages upon termination based on the preceding claims; (v) all claims for the failure to timely pay wages  
18 during employment based on the preceding claims; (vi) all claims for wage statement violations based on  
19 the preceding claims; (vii) all claims for the failure to reimburse for necessary business expenses; and  
20 (viii) all claims asserted through California Business & Professions Code §§ 17200, *et seq.*, and  
21 California Labor Code §§ 2698, *et seq.* based on the preceding claims, including any and all associated  
22 claims for penalties, premium pay, liquidated damages, interest, attorney fees and costs.

23 24. "Released Parties" means Defendant and its subsidiaries, affiliates, parents and  
24 attorneys, and each of their company-sponsored employee benefit plans and their respective successors  
25 and predecessors in interest, as well as their respective past and present officers, directors, shareholders,  
26 employees, agents, principals, heirs, representatives, administrators, fiduciaries, trustees, accountants,  
27 auditors, consultants, insurers and reinsurers.

28 25. "Request for Exclusion" means a timely letter submitted by a Class Member indicating a

1 request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,  
2 address, telephone number and last four digits of the Social Security Number of the Class Member  
3 requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement  
4 Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement;  
5 and (v) be faxed or postmarked on or before the Response Deadline.

6 26. "Response Deadline" means the deadline by which Class Members must postmark or  
7 fax to the Settlement Administrator Requests for Exclusion, or postmark Notices of Objection to the  
8 Settlement Administrator. The Response Deadline will be thirty (30) calendar days from the initial  
9 mailing of the Notice Packet by the Settlement Administrator, unless the thirtieth (30th) calendar day  
10 falls on a Sunday or State holiday, in which case the Response Deadline will be extended to the next day  
11 on which the U.S. Postal Service is open.

12 27. "Settlement Administration Costs" means the costs payable from the Class Settlement  
13 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,  
14 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Class  
15 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The  
16 Settlement Administration Costs will be paid from the Class Settlement Amount, including, if necessary,  
17 any such costs in excess of the amount represented by the Settlement Administrator as being the  
18 maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of  
19 approximately 700 Class Members, the Settlement Administration Costs are currently estimated to be  
20 Eleven Thousand Five Hundred Dollars (\$11,500).

21 28. "Settlement Administrator" means CPT Group, Inc., or any other third-party class action  
22 settlement administrator agreed to by the Parties and approved by the Court for the purposes of  
23 administering this Settlement. The Parties each represent that they do not have any financial interest in  
24 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that  
25 could create a conflict of interest.

26 29. "Workweeks" means the number of days of employment at the CDCR facility in  
27 Stockton, California for each Class Member during the Class Period, subtracting days on leave of  
28 absence (if any), dividing by seven (7), and rounding up to the nearest whole number. All Class

Members will be credited with at least one Workweek.

## TERMS OF AGREEMENT

The Plaintiffs, on behalf of themselves and the Settlement Class, and Defendant agree as follows:

30. First Amended Complaint. As a condition of settlement, the Parties will stipulate to the filing of a First Amended Complaint (“FAC”) to conform the pleadings with the scope of the Settlement and Released Claims and the definition of Class Period, and to name Charmaine Walker as an additional Named Plaintiff and Class Representative. Defendant will not be required to file an answer or other responsive pleading to the FAC. If, for any reason, the Court does not grant final approval of the Settlement, or if the Settlement does not become final and effective for any reason, then the FAC will be deemed withdrawn and the First Amended Complaint will again become the operative complaint without prejudice to Plaintiff Belinda Payton’s right to seek leave to file another amended complaint. Defendant does not impliedly or expressly waive any arguments or defenses to the FAC.

31. Funding of the Class Settlement Amount. Defendant will make a one-time deposit of the Class Settlement Amount of Six Hundred Fifty Thousand Dollars (\$650,000) into a Qualified Settlement Account to be established by the Settlement Administrator. Defendant will pay the employer’s share of payroll taxes separately. After the Effective Date, the Class Settlement Amount will be used for: (i) Individual Settlement Payments paid from the Net Settlement Amount; (ii) the Labor and Workforce Development Agency Payment; (iii) the Class Representative Enhancement Payments; (iv) Attorneys’ Fees and Costs; and (v) Settlement Administration Costs. Defendant will deposit the Class Settlement Amount within ten (10) calendar days of the Effective Date.

32. Attorneys’ Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Class Counsel for Attorneys’ Fees and Costs of not more than Two Hundred Sixteen Thousand Six Hundred Sixty Seven Dollars (\$216,667), plus the reimbursement of all out-of-pocket costs and expenses associated with Class Counsel’s litigation and settlement of the Action (including expert fees, investigations expenses, photocopying, etc.), not to exceed Thirty Thousand Dollars (\$30,000), both of which will be paid from the Class Settlement Amount.

33. Class Representative Enhancement Payment. In exchange for a general release, and in

1 recognition of their effort and work in prosecuting the Action on behalf of Class Members, Defendant  
2 agrees not to oppose or impede any application or motion for Class Representative Enhancement  
3 Payments of Ten Thousand Dollars (\$10,000) to Belinda Payton and Five Thousand Dollars (\$5,000) to  
4 Charmaine Walker.. The Class Representative Enhancement Payments will be paid from the Class  
5 Settlement Amount and will be in addition to Plaintiffs' Individual Settlement Payment paid pursuant to  
6 the Settlement. Plaintiffs will be solely and legally responsible to pay any and all applicable taxes on the  
7 Class Representative Enhancement Payments.

8 34. Settlement Administration Costs. The Settlement Administrator will be paid for the  
9 reasonable costs of administration of the Settlement and distribution of payments from the Class  
10 Settlement Amount, which is currently estimated to be Eleven Thousand Five Hundred Dollars  
11 (\$11,500). These costs, which will be paid from the Class Settlement Amount, will include, *inter alia*,  
12 the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS  
13 Forms, distributing Notice Packets, calculating and distributing the Class Settlement Amount, and  
14 providing necessary reports and declarations.

15 35. Labor and Workforce Development Agency Payment. Subject to Court approval, the  
16 Parties agree that the amount of Fifty Thousand Dollars (\$50,000) from the Class Settlement Amount  
17 will be designated for satisfaction of Plaintiffs' and Class Members' PAGA claims. Pursuant to PAGA,  
18 Seventy-Five Percent (75%), or Thirty Seven Thousand Five Hundred Dollars (\$37,500), of this sum  
19 will be paid to the LWDA and Twenty-Five Percent (25%), or Twelve Thousand Five Hundred Dollars  
20 (\$12,500), will become part of the Net Settlement Amount.

21 36. Net Settlement Amount. The entire Net Settlement Amount will be distributed to  
22 Participating Class Members as Individual Settlement Payments. No portion of the Net Settlement  
23 Amount will revert to or be retained by Defendant.

24 37. Individual Settlement Payment Calculations. Individual Settlement Payments will be  
25 calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class  
26 Member worked during the Class Period. Specific calculations of Individual Settlement Payments will  
27 be made as follows:

28 37(a) Defendant will calculate the total number of Workweeks worked by each

Class Member during the Class Period and the aggregate total number of Workweeks worked by all Class Members during the Class Period.

37(b) To determine each Class Member's estimated "Individual Settlement Payment," the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the "Workweek Value." Each Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value.

37(c) The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings or deductions.

37(d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

38. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

39. Administration Process. The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in

administration of the Settlement.

40. Delivery of the Class List. Within thirty (30) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator and to Class Counsel.

41. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

42. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an objection to the Settlement.

43. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks each respective Class Member worked for Defendant during the Class Period; (v) each Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the dates which comprise the Class Period; (vii) instructions on how to submit Requests for Exclusion or Notices of Objection; (viii) the deadlines by which the Class Member must postmark or fax Request for Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims to be released.

44. Disputed Information on Notice Packets. Class Members will have an opportunity to

1 dispute the information provided in their Notice Packets. To the extent Class Members dispute their  
2 employment dates or the number of Workweeks on record, Class Members may produce evidence to the  
3 Settlement Administrator showing that such information is inaccurate. The Settlement Administrator  
4 will decide the dispute. Defendant's records will be presumed correct, but the Settlement Administrator  
5 will evaluate the evidence submitted by the Class Member and will make the final decision as to the  
6 merits of the dispute. All disputes will be decided within ten (10) business days of the Response  
7 Deadline.

8 45. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the  
9 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The  
10 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of  
11 receiving the defective submission to advise the Class Member that his or her submission is defective  
12 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will  
13 have until (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter,  
14 whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for  
15 Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

16 46. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the  
17 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement  
18 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the  
19 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request  
20 for Exclusion has been timely submitted.

21 47. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member  
22 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid  
23 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released  
24 Claims during the Class Period, as well as any Judgment that may be entered by the Court if it grants  
25 final approval to the Settlement.

26 48. Releases by Participating Class Members. Upon the Effective Date, and except as to  
27 such rights or claims as may be created by this Settlement Agreement, each Participating Class Member,  
28 together and individually, on their behalf and on behalf of their respective spouses, heirs, executors,

1 administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released  
2 Parties, or any of them, from each of the Released Claims during the Class Period. With respect to the  
3 Released Claims only, Class Members will expressly waive and relinquish, to the fullest extent permitted  
4 by law, the provisions, rights and benefits of Section 1542 of the California Civil Code to the extent it is  
5 applicable (or any other similar provision under applicable federal, state or local law) that is quoted  
6 below. Section 1542 provides:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR  
8 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY  
10 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
11 WITH THE DEBTOR OR RELEASED PARTY.

12 49. Subject to and in accordance with the provisions of the Settlement Agreement, even if  
13 Class Members may hereafter discover facts in addition to or different from those which they now know  
14 or believe to be true with respect to the subject matter of the Released Claims, Class Members shall be  
15 deemed to have and by operation of the Final Judgment shall have, fully, finally and forever settled and  
16 released any and all Released Claims. This is true whether the Released Claims are known or unknown,  
17 suspected or unsuspected, which now exist or heretofore have existed under any theory of law or equity  
18 now existing or coming into existence in the future, including but not limited to conduct that is negligent,  
19 intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent  
20 discovery or existence of such different or additional facts.

21 50. Objection Procedures. To object to the Settlement Agreement, a Class Member must  
22 postmark a valid Notice of Objection to the Settlement Administrator on or before the Response  
23 Deadline. The Notice of Objection must be signed by the Class Member and contain all information  
24 required by this Settlement Agreement. The postmark will be deemed the exclusive means for  
25 determining that the Notice of Objection is timely. Class Members who fail to object in the manner  
26 specified above will be deemed to have waived all objections to the Settlement and will be foreclosed  
27 from making any objections, whether by appeal or otherwise, to the Settlement Agreement. Class  
28 Members who postmark timely Notices of Objection will have a right to appear at the Final Approval

Hearing in order to have their objections heard by the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not represent any Class Members with respect to any such objections to this Settlement.

51. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that certifies the number of Class Members who have submitted valid Requests for Exclusion, objections to the Settlement, and whether any Class Member has submitted a challenge to any information contained in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

52. Distribution Timing of Individual Settlement Payments. Within twenty (20) calendar days of the Effective Date, the Settlement Administrator will issue payments to: (i) Participating Class Members; (ii) the Labor and Workforce Development Agency; (iii) Plaintiffs; and (iv) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement.

53. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for more than one hundred and twenty (120) calendar days after issuance will be tendered to the State Controller's Office, Unclaimed Property Division.

54. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

55. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: (i) Twenty-Five Percent (25%) of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued; and (ii) Seventy-Five (75%) will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

56. Administration of Taxes by the Settlement Administrator. The Settlement

1 Administrator will be responsible for issuing to Plaintiffs, Participating Class Members, and Class  
2 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to  
3 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes  
4 and penalties to the appropriate government authorities.

5 57. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect  
6 of the payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on  
7 any statement, representation, or calculation by Defendant or by the Settlement Administrator in this  
8 regard.

9 58. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES  
10 OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS  
11 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)  
12 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND  
13 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES  
14 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR  
15 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED  
16 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES  
17 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE  
18 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS  
19 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX  
20 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS  
21 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY  
22 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY  
23 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO  
24 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
25 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER  
26 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF  
27 ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER  
28 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE

1 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY  
2 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
3 AGREEMENT.

4 59. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant  
5 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
6 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of  
7 action or right herein released and discharged.

8 60. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally  
9 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other  
10 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null  
11 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will  
12 likewise be treated as void from the beginning.

13 61. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to  
14 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval  
15 Order for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii)  
16 preliminary approval of the proposed Settlement Agreement, (iii) setting a date for a final fairness  
17 hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class  
18 Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs will  
19 submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the  
20 proposed Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible  
21 for drafting all documents necessary to obtain preliminary approval.

22 62. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the  
23 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the  
24 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the  
25 Settlement Agreement along with the amounts properly payable for: (i) Attorneys' Fees and Costs; (ii)  
26 the Class Representative Enhancement Payment; (iii) Individual Settlement Payments; (iv) the Labor  
27 and Workforce Development Agency Payment; (v) all Settlement Administration Costs. The final  
28 fairness hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class

1 Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel  
2 will also be responsible for drafting the attorneys' fees and costs application to be heard at the final  
3 approval hearing.

4 63. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the  
5 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its  
6 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of  
7 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement  
8 administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or  
9 as set forth in this Settlement Agreement.

10 64. Release by Plaintiffs. Upon the Effective Date, in addition to the claims being released  
11 by all Participating Class Members, Plaintiffs will release and forever discharge the Released Parties, to  
12 the fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and  
13 not asserted, which Plaintiffs have or may have against the Released Parties as of the date of execution of  
14 this Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the  
15 California Civil Code or similar provisions of other applicable law may apply, Plaintiffs expressly waive  
16 any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California  
17 Civil Code or similar provisions of applicable law which are as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
19 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
20 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
21 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
22 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
23 PARTY.

24 65. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include  
25 the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set  
26 forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

27 66. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the  
28 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements

1 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section  
2 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is  
3 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and  
4 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or  
5 contradict the terms of this Settlement Agreement.

6 67. Amendment or Modification. No amendment, change, or modification to this  
7 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

8 68. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and  
9 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement  
10 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant  
11 to this Settlement Agreement to effectuate its terms and to execute any other documents required to  
12 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with  
13 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are  
14 unable to reach agreement on the form or content of any document needed to implement the Settlement,  
15 or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement,  
16 the Parties may seek the assistance of the Court to resolve such disagreement.

17 69. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,  
18 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

19 70. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto  
20 will be governed by and interpreted according to the laws of the State of California, without regard for its  
21 conflict of laws principles.

22 71. Execution and Counterparts. This Settlement Agreement is subject only to the execution  
23 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All  
24 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned  
25 copies of the signature page, will be deemed to be one and the same instrument.

26 72. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this  
27 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this  
28 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account

all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

73. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

74. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only; except, however, that Plaintiffs or Class Counsel may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal any court order that materially alters the Settlement Agreement's terms.

75. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class action should be certified or (ii) Defendant is liable to Plaintiffs or any Class Member, other than according to the Settlement's terms.

76. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not

1 be offered or received as evidence in any action or proceeding to establish any liability or admission on  
2 the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-  
3 compliance with, federal, state, local or other applicable law.

4 77. No Public Comment: The Parties and their counsel agree that they will not issue any  
5 press releases, initiate any contact with the press, respond to any press inquiry, or have any  
6 communication with the press about the fact, amount or terms of the Settlement.

7 78. Waiver. No waiver of any condition or covenant contained in this Settlement  
8 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to  
9 imply or constitute a further waiver by such party of the same or any other condition, covenant, right or  
10 remedy.

11 79. Enforcement Actions. In the event that one or more of the Parties institutes any legal  
12 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement  
13 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be  
14 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including  
15 expert witness fees incurred in connection with any enforcement actions.

16 80. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
17 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed  
18 more strictly against one party than another merely by virtue of the fact that it may have been prepared  
19 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations  
20 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

21 81. Representation By Counsel. The Parties acknowledge that they have been represented  
22 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and  
23 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,  
24 Plaintiffs and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

25 82. All Terms Subject to Final Court Approval. All amounts and procedures described in  
26 this Settlement Agreement herein will be subject to final Court approval.

27 83. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good  
28 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this

Settlement Agreement.

84. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

85. Preliminary and Permanent Injunction. Except as to Class Members who timely submit Requests for Exclusion, the Preliminary Approval Order and Final Judgment will contain provisions enjoining Plaintiffs and the Class Members from prosecuting the Released Claims and enjoining Plaintiffs and the Class Members from initiating or continuing other proceedings regarding the Released Claims, including but not limited to filing any claims for monetary relief of the Released Claims before the Division of Labor Standards and Enforcement ("DLSE") or in any forum whatsoever. Inclusion of these provisions in the Order of Preliminary Approval Order and Final Judgment and Order of Final Approval is a material part of the consideration for this Settlement.

### READ CAREFULLY BEFORE SIGNING

**PLAINTIFF**

Dated: 4/7/2020

DocuSigned by:

*Belinda Payton*

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Belinda Payton

**PLAINTIFF**

Dated: \_\_\_\_\_

Charmaine Walker

**DEFENDANT PRIDE INDUSTRIES**

Dated: \_\_\_\_\_

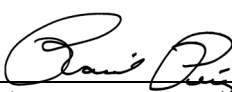
Please Print Name of Authorized Signatory

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**APPROVED AS TO FORM**

**CAPSTONE LAW APC**

May 12, 2020  
Dated: \_\_\_\_\_

By:  \_\_\_\_\_  
Raul Perez

Attorneys for Plaintiff Belinda Payton

**FORREST & BECKER LAW GROUP, APC**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Emma Forrest

Attorneys for Defendant PRIDE Industries

# Exhibit A

*Payton v. PRIDE Industries*, No. STK-UOE-2017-7110  
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN JOAQUIN  
NOTICE OF CLASS ACTION SETTLEMENT

*You are not being sued. This notice affects your rights. Please read it carefully*

To: All persons who were employed by Defendant PRIDE Industries (“Defendant”) in non-exempt positions at the California Department of Corrections and Rehabilitation (“CDCR”) in Stockton, California during the period from January 1, 2016 to [date of Preliminary Approval].

On \_\_\_\_\_, the Honorable Barbara Kronlund of the San Joaquin County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

**Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund.** The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at \_\_\_\_:00 \_\_\_\_m. on \_\_\_\_\_, 2020 in Department 10D of the San Joaquin County Superior Court located at 180 E. Weber Avenue, Stockton, CA 95202. You are not required to attend the hearing, but you are welcome to do so.

**Summary of the Litigation**

Plaintiffs Belinda Payton and Charmaine Walker, on their behalf and on behalf of other current and former non-exempt employees who worked at the California Department of Corrections and Rehabilitation (“CDCR”) in Stockton, California, alleges that Defendant violated California state labor laws as a result of its alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) provide employees with accurate, itemized wage statements; and (5) reimburse employees for all necessary business expenses.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. The parties participated in multiple mediations with the Hon. Richard Hodge (Ret.), an experienced and well-respected class action mediator. With Judge Hodge’s guidance, the parties were able to negotiate a complete settlement of Plaintiff’s claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Capstone Law APC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiffs’ claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiffs. Neither the proposed Settlement nor any action taken to carry out the proposed Settlement is, may be construed as, or may be used as an admission, concession or indication by or against PRIDE of any fault, wrongdoing, or liability whatsoever. The Court has made no ruling on the merits of the Class Members’ claims and has determined only that certification of the Class for settlement is appropriate under California law.

**Summary of The Proposed Settlement Terms**

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$650,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class Representative Enhancement Payments of \$10,000 to Belinda Payton and \$5,000 to Charmaine Walker for their services on

behalf of the class; (3) \$216,667 in attorneys' fees and up to \$30,000 in litigation costs and expenses; (4) a \$37,500 payment to the California Labor and Workforce Development Agency ("LWDA") in connection and accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$10,000. After deducting the Class Representative Enhancement Payments, attorneys' fees and costs, the payment to the LWDA, and the Settlement Administrator's fees and expenses, a total of approximately \$340,833 will be allocated to Class Members who do not opt out of the settlement ("Net Settlement Amount").

Each Class Member's settlement payment will be based on the number of Workweeks each Class Member worked in a non-exempt position during the period from January 1, 2016 through [date of Preliminary Approval]. ("Class Period"). The formula for calculating settlement payments is as follows:

- (a) Defendant will calculate the total aggregate number of Workweeks that all Class Members worked during the applicable Class Period ("Total Workweeks").
- (b) The value of each individual Workweek shall then be determined by dividing the proceeds of the Net Settlement Amount by the Total Workweeks amount, resulting in the "Workweek Point Value".
- (c) An "Individual Settlement Payment" amount for each Class Member will then be determined by multiplying the individual Class Member's number of Workweeks by the Workweek Point Value.
- (d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

According to Defendant's records, you worked during the Class Period in a non-exempt position at the CDCR in Stockton, California for a total of \_\_\_\_ Workweeks. Accordingly, your estimated payment is approximately \$ \_\_\_\_\_. If you believe the information provided above is incorrect, please contact the Settlement Administrator at \_\_\_\_\_. If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise.

IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 25% of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued, and 75% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

### **Your Options Under the Settlement**

#### ***Option 1 – Automatically Receive a Payment from the Settlement***

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims ("Released Claims"): All claims, rights, demands, liabilities, and causes of action, arising from, or related to, the same set of operative facts as those set forth in the operative complaint during the Class Period, including: (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay wages upon termination based on the preceding claims; (v) all claims for the failure to timely pay wages during employment based on the preceding claims; (vi) all claims for wage statement violations based on the preceding claims; (vii) all claims for the failure to reimburse for necessary business expenses; and (viii) all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 2698, et seq. based on the preceding claims, including any and all associated claims for penalties, premium pay, liquidated damages, interest, attorney fees and costs.

**Questions? Contact the Settlement Administrator toll free at 1-\*\*\*-\*\*\*-\*\*\*\***

With respect to the Released Claims only, Class Members who choose Option 1 will expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code to the extent it is applicable (or any other similar provision under applicable federal, state or local law) that is quoted below. Section 1542 provides:

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 by him or her, would have materially affected his or her settlement with the debtor or released party.

Subject to and in accordance with the provisions of the Settlement Agreement, even if Class Members who select Option 1 may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, Class Members shall be deemed to have and by operation of the Final Judgment shall have, fully, finally and forever settled and released any and all Released Claims. This is true whether the Released Claims are known or unknown, suspected or unsuspected, which now exist or heretofore have existed under any theory of law or equity now existing or coming into existence in the future, including but not limited to conduct that is negligent, intention, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. I agree that I will not make a claim against any of the Released Parties that is in any way related to the Released Claims.

### **Option 2 – Opt Out of the Settlement**

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator  
c/o \_\_\_\_\_  
\_\_\_\_\_

The written request to be excluded must be postmarked or faxed not later than \_\_\_\_\_, 2020. If you submit a request for exclusion which is not postmarked or faxed by \_\_\_\_\_, 2020, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will (1) be barred from participating in the settlement, but you will not be deemed to have released the Released Claims, (2) be barred from filing an objection to the settlement, and (3) not receive a payment from the settlement.

### **Option 3 – Object to the Settlement**

If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement. Your objection must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator's address].

All objections must be received by the administrator by not later than \_\_\_\_\_ 2020. Late objections will not be considered. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

**Questions? Contact the Settlement Administrator toll free at 1-\*\*\*-\*\*\*-\*\*\*\***

You may also, if you wish, appear at the Final Fairness Hearing set for \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. in the Superior Court of the State of California, for the County of San Joaquin and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

**Additional Information**

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Raul Perez  
**Capstone Law APC**  
1875 Century Park E., Suite 1000  
Los Angeles, CA 90067  
Phone: Number

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT OR DEFENDANT'S ATTORNEYS WITH INQUIRIES.

**Questions? Contact the Settlement Administrator toll free at 1-\*\*\*-\*\*\*-\*\*\*\***

# Exhibit 2

Mark A. Ozzello (SBN 116595)  
Mark.Ozzello@capstonelawyers.com  
Brandon Brouillette (SBN 273156)  
Brandon.Brouillette@capstonelawyers.com  
Brooke W. Waldrop (SBN 314486)  
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Capstone Law APC  
1875 Century Park East, Suite 1000  
Los Angeles, California 90067  
Telephone: (310) 556-4811  
Facsimile: (310) 943-0396

Attorneys for Plaintiffs Belinda Payton  
and Charmaine Walker

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN JOAQUIN

BELINDA PAYTON and CHARMAINE  
WALKER, individually, and on behalf of  
other members of the general public  
similarly situated and as aggrieved  
employees pursuant to the Private Attorneys  
General Act ("PAGA"), and on behalf of  
the State of California and other aggrieved  
employees,

Plaintiff,

vs.

PRIDE INDUSTRIES, a California  
corporation; and DOES 1 through 10,  
inclusive,

Defendants.

Case No.:

**FIRST AMENDED CLASS ACTION  
COMPLAINT & ENFORCEMENT  
ACTION UNDER THE PRIVATE  
ATTORNEYS GENERAL ACT,  
CALIFORNIA LABOR CODE §§ 2698, *ET  
SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7 and 1198 (Failure to Provide Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201, 202, and 203 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (9) Violation of California Business &

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Professions Code §§ 17200, *et seq.*  
(Unlawful Business Practices); and  
(10) Violation of California Business &  
Professions Code §§ 17200, *et seq.* (Unfair  
Business Practices)

**Jury Trial Demanded**

1 Plaintiffs Belinda Payton and Charmaine Walker, individually and on behalf of all  
2 other members of the public similarly situated, and as aggrieved employees, and on behalf of  
3 the State of California and all other aggrieved employees, alleges as follows:

#### 4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure  
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil  
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other  
8 current and former employees who worked for Defendants in California as non-exempt,  
9 hourly-paid and who received at least one wage statement and against whom one or more  
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision  
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)   
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,  
13 and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior  
14 Court and will be established according to proof at trial. This Court has jurisdiction over this  
15 action pursuant to the California Constitution, Article VI, section 10. The statutes under  
16 which this action is brought do not specify any other basis for jurisdiction. Plaintiffs’ share of  
17 civil penalties sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over all Defendants because Defendants are either  
19 citizens of California, have sufficient minimum contacts in California, or otherwise  
20 intentionally avail themselves of the California market so as to render the exercise of  
21 jurisdiction over them by the California courts consistent with traditional notions of fair play  
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action  
23 because there is no complete diversity, and this case falls within the statutory exceptions to  
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).  
25 Upon information and belief, two-thirds or more of the class members and Defendants are  
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens  
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant  
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiffs' claims; and (d) no other class action has been filed  
2 within the past three (3) years on behalf of the same proposed class against Defendants  
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants employ persons in this  
5 county and employed Plaintiffs in this county, and thus a substantial portion of the  
6 transactions and occurrences related to this action occurred in this county.

### 7 THE PARTIES

8 4. Plaintiff Belinda Payton is a resident of Lodi, in San Joaquin County,  
9 California. Defendants employed Plaintiff as an hourly, non-exempt Environmental Services  
10 Technician and Environmental Services Floor Foreperson from approximately January 2016  
11 to July 2016. During her employment, Plaintiff Payton worked for Defendants at the  
12 California Department of Corrections and Rehabilitation healthcare facility in Stockton,  
13 California. Plaintiff Payton worked approximately eight (8) hours or more per day, five (5)  
14 days per week, and forty (40) hours or more per week. Her typical shift started at 6:30 a.m.  
15 and ended at 3:00 p.m. At the time Plaintiff Payton's employment with Defendants ended,  
16 she earned approximately \$17.50 per hour. Her job duties included, without limitation,  
17 cleaning furniture, rooms and hallways, emptying trash receptacles, maintaining storage  
18 closets, and supervising custodial staff.

19 5. Plaintiff Charmaine Walker was employed by Defendants as a non-exempt,  
20 hourly paid Environmental Technician from approximately July 2015 to June 2019. Plaintiff  
21 Walker worked for Defendants at the California Department of Corrections and Rehabilitation  
22 Prison in Stockton, California. During her employment, Plaintiff Walker typically worked nine  
23 (9) hours or more per day, five (5) days per week, from 5:00 a.m. to 2:30 p.m. Her primary job  
24 duties included, without limitation, cleaning, sanitizing, spraying, sweeping, mopping, and  
25 disinfecting the premises, as well as organizing cleaning supplies.

26 6. Defendant PRIDE INDUSTRIES was and is, upon information and belief, a  
27 California corporation doing business in California, and at all times hereinafter mentioned, an  
28 employer whose employees are engaged throughout this county, the State of California, or the

1 various states of the United States of America.

2 7. Plaintiffs are unaware of the true names or capacities of the Defendants sued  
3 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to  
4 amend the complaint and serve such fictitiously named Defendants once their names and  
5 capacities become known.

6 8. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10  
7 are the partners, agents, owners, shareholders, managers, or employees of PRIDE  
8 INDUSTRIES at all relevant times.

9 9. Plaintiffs are informed and believe, and thereon allege, that each and all of the  
10 acts and omissions alleged herein was performed by, or is attributable to, PRIDE  
11 INDUSTRIES and/or DOES 1 through 10 (collectively “Defendants” or “PRIDE”), each  
12 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,  
13 each of the other co-Defendants and was acting within the course and scope of such agency,  
14 employment, joint venture, or concerted activity with legal authority to act on the others’  
15 behalf. The acts of any and all Defendants were in accordance with, and represent, the official  
16 policy of Defendants.

17 10. At all relevant times, Defendants, and each of them, ratified each and every act  
18 or omission complained of herein. At all relevant times, Defendants, and each of them, aided  
19 and abetted the acts and omissions of each and all the other Defendants in proximately causing  
20 the damages herein alleged.

21 11. Plaintiffs are informed and believe, and thereon allege, that each of said  
22 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
23 omissions, occurrences, and transactions alleged herein.

#### 24 **GENERAL ALLEGATIONS**

25 12. Defendants are a company providing manufacturing, logistics, and integrated  
26 facilities services to business and government agencies nationwide. Upon information and  
27 belief, Defendants currently employ approximately 5,600 employees, including approximately  
28 2,000 employees in the state of California.

1           13.     Upon information and belief, Defendants maintain a single, centralized Human  
2 Resources (HR) department at their corporate headquarters in Roseville, California, which is  
3 responsible for conducting Defendants' recruiting and hiring of new employees, as well as  
4 communicating and implementing Defendants' company-wide policies to employees  
5 throughout California.

6           14.     In particular, Plaintiffs and class members, on information and belief, received  
7 the same standardized documents and/or written policies. Upon information and belief, the  
8 usage of standardized documents and/or written policies, including new hire documents,  
9 indicate that Defendants dictated policies at the corporate level and implemented them  
10 company-wide, regardless of their employees' assigned locations or positions. Upon  
11 information and belief, Defendants set forth uniform policies and procedures in several  
12 documents provided at an employee's time of hire. At the time Plaintiffs were hired, they  
13 received documents including, but not limited to, a Confidential Information and Trade Secret  
14 Agreement, a New Employee Orientation checklist, and Employee Handbook  
15 Acknowledgement and Receipt, informing her that they would be subject to the policies and  
16 rules listed in the Employee Handbook and other documents.

17           15.     On information and belief, all transactions regarding hiring, terminations,  
18 promotions, pay increases, and employee transfers, etc., were submitted to and processed by  
19 Defendants' HR department in Roseville, California. Additionally, on information and belief,  
20 Defendants' corporate records, business records, data, and other information related to  
21 Defendants, including, in particular, HR records pertaining to Defendants' California  
22 employees, are also maintained at Defendants' corporate headquarters in Roseville, California.

23           16.     Upon information and belief, Defendants require that all new hires undergo  
24 mandatory drug testing as a condition of employment. Defendants provide their newly-hired  
25 employees and/or prospective employees with the location of the testing facility, select the  
26 time and date of the drug test, and determine the scope of the testing. Defendants require that  
27 these newly-hired employees and/or prospective employees travel using their own vehicles to  
28 the site to undergo the drug test. Upon information and belief, Defendants do not compensate

1 newly-hired employees and/or prospective employees for the time it takes to travel to and  
2 from the testing facility or for the time it takes to undergo the drug testing. Upon information  
3 and belief, Defendants do not reimburse employees for the travel expenses they incur getting  
4 to and from the testing facility.

5 17. Upon information and belief, Defendants maintain a centralized Payroll  
6 department at their corporate headquarters in Roseville, California, which processes payroll  
7 for all non-exempt, hourly-paid employees working for Defendants at their various locations  
8 in California, including Plaintiffs and class members. Based upon information and belief,  
9 Defendants issue the same formatted wage statements to all non-exempt, hourly-paid  
10 employees in California, irrespective of their work location. Upon information and belief,  
11 Defendants process payroll for departing employees in the same manner throughout the State  
12 of California, regardless of the manner in which each employee's employment ends.

13 18. Defendants continue to employ non-exempt or hourly-paid employees  
14 throughout California.

15 19. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
16 mentioned, Defendants were advised by skilled lawyers and other professionals, employees  
17 and advisors knowledgeable about California labor and wage law, employment and personnel  
18 practices, and about the requirements of California law.

19 20. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class  
20 members were not paid for all hours worked because all hours worked were not recorded.

21 21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
22 should have known that Plaintiffs and class members were entitled to receive certain wages  
23 for overtime compensation and that they were not receiving certain wages for overtime  
24 compensation.

25 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
26 should have known that Plaintiffs and class members were entitled to receive at least  
27 minimum wages for compensation and that they were not receiving at least minimum wages  
28 for work that was required to be done off-the-clock. In violation of the California Labor

1 Code, Plaintiffs and class members were not paid at least minimum wages for work done off-  
2 the-clock.

3 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
4 should have known that Plaintiffs and class members were entitled to meal periods in  
5 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular  
6 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal  
7 periods and that Plaintiffs and class members were not provided with all meal periods or  
8 payment of one (1) additional hour of pay at their regular rates of pay when they did not  
9 receive a timely, uninterrupted, thirty (30) minute meal period.

10 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
11 should have known that Plaintiffs and class members were entitled to rest periods in  
12 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)  
13 additional hour of pay at their regular rates of pay when they were not provided with a  
14 compliant rest period and that Plaintiffs and class members were not provided compliant rest  
15 periods or payment of one (1) additional hour of pay at their regular rates of pay when they  
16 were not provided a compliant rest period.

17 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
18 should have known that Plaintiffs and class members were entitled to receive complete and  
19 accurate wage statements in accordance with California law. In violation of the California  
20 Labor Code, Plaintiffs and class members were not provided complete and accurate wage  
21 statements.

22 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
23 should have known that they had a duty to maintain accurate and complete payroll records in  
24 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,  
25 and intentionally failed to do so.

26 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
27 should have known that Plaintiffs and class members were entitled to timely payment of all  
28 wages earned upon termination of employment. In violation of the California Labor Code,

1 Plaintiffs and class members did not receive payment of all wages due, including, but not  
2 limited to, overtime wages, minimum wages, and meal and rest period premiums, within  
3 permissible time periods.

4 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
5 should have known that Plaintiffs and class members were entitled to timely payment of  
6 wages during their employment. In violation of the California Labor Code, Plaintiffs and  
7 class members did not receive payment of all wages, including, but not limited to, overtime  
8 wages, minimum wages, and meal and rest period premiums, within permissible time periods.

9 29. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
10 mentioned, that Defendants knew or should have known that they had a duty to cover the costs  
11 and expenses Plaintiffs and class members incurred obtaining mandatory pre-employment  
12 physical examinations and drug tests, but willfully, knowingly, and intentionally failed to do  
13 so.

14 30. Plaintiffs are informed and believe, and thereon allege that Defendants knew or  
15 should have known that Plaintiffs and class members were entitled to receive reimbursement  
16 for all business-related expenses and costs they incurred during the course and scope of their  
17 employment, and that they did not receive reimbursement of applicable business-related  
18 expenses and costs they incurred.

19 31. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
20 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiffs  
21 and class members with written notice of the material terms of their employment with  
22 Defendants as required by the California Wage Theft Prevention Act, but willfully,  
23 knowingly, and intentionally failed to do so.

24 32. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
25 mentioned, Defendants knew or should have known that they had a duty to compensate  
26 Plaintiffs and class members for all hours worked, and that Defendants had the financial  
27 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,  
28 and falsely represented to Plaintiffs and class members that they were properly denied wages,

1 all in order to increase Defendants' profits

2 33.

3 34. At all times herein set forth, PAGA provides that any provision of law under  
4 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be  
5 assessed and collected by the LWDA for violations of the California Labor Code and  
6 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a  
7 civil action brought on behalf of themselves and other current or former employees pursuant  
8 to procedures outlined in California Labor Code section 2699.3.

9 35. Plaintiffs and other current and former employees of Defendants are "aggrieved  
10 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current  
11 or former employees and one or more of the alleged violations were committed against them.

12 36. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved  
13 employee, including Plaintiff, may pursue a civil action arising under PAGA after the  
14 following requirements have been met:

- 15 (a) The aggrieved employee or representative shall give written notice by  
16 online filing with the LWDA and by certified mail to the employer of  
17 the specific provisions of the California Labor Code alleged to have  
18 been violated (other than those listed in Section 2699.5), including the  
19 facts and theories to support the alleged violation
- 20 (b) An aggrieved employee's notice filed with the LWDA pursuant to  
21 2699.3(c) and any employer response to that notice shall be  
22 accompanied by a filing fee of seventy-five dollars (\$75).
- 23 (c) The employer may cure the alleged violation within thirty-three (33)  
24 calendar days of the postmark date of the notice sent by the aggrieved  
25 employee or representative. The employer shall give written notice  
26 within that period of time by certified mail to the aggrieved employee or  
27 representative and by online filing with the LWDA if the alleged  
28 violation is cured, including a description of actions taken, and no civil

1 action pursuant to Section 2699 may commence. If the alleged violation  
2 is not cured within the 33-day period, the aggrieved employee may  
3 commence a civil action pursuant to Section 269.

4 37. On January 24, 2020 Plaintiff Walker provided written notice by online filing  
5 to the LWDA and by Certified Mail to Defendants of the specific provisions of the California  
6 Labor Code alleged to have been violated, including facts and theories to support the alleged  
7 violations, in accordance with California Labor Code section 2699.3. Plaintiff Walker's  
8 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).  
9 The LWDA PAGA Administrator confirmed receipt of Plaintiff Walker's written notice and  
10 assigned Plaintiff Walker PAGA Case Number LWDA-CM-768730-20. A true and correct  
11 copy of Plaintiff Walker's written notice to the LWDA and Defendants is attached hereto as  
12 "Exhibit 1."

13 38. As of the filing date of this complaint, over 65 days have passed since Plaintiff  
14 Walker sent the notice described above to the LWDA, and the LWDA has not responded that  
15 it intends to investigate Plaintiff Walker's claims and Defendants have not cured the  
16 violations.

17 39. Thus, Plaintiff Walker has satisfied the administrative prerequisites under  
18 California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against  
19 Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a),  
20 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802 and 2810.5.

21 40. Labor Code section 558 (a) provides "[a]ny employer or other person acting on  
22 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
23 provision regulating hours and days of work in any order of the Industrial Welfare  
24 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty  
25 dollars (\$50) for each underpaid employee for each pay period for which the employee was  
26 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each  
27 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay  
28 period for which the employee was underpaid in addition to an amount sufficient to recover

1 underpaid wages.” Labor Code section 558(c) provides “[t]he civil penalties provided for in  
2 this section are in addition to any other civil or criminal penalty provided by law.”

3 41. Defendants, at all times relevant to this complaint, were employers or persons  
4 acting on behalf of an employer(s) who violated Plaintiff Walker’s and other aggrieved  
5 employees’ rights by violating various sections of the California Labor Code as set forth  
6 above.

7 42. As set forth below, Defendants have violated numerous provisions of both the  
8 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage  
9 Order.

10 43. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),  
11 2699.3(a), 2699.3(c), and 2699.5, Plaintiff Walker, acting in the public interest as a private  
12 attorney general, seeks assessment and collection of civil penalties for herself, all other  
13 aggrieved employees, and the State of California against Defendants for violations of  
14 California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d),  
15 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

#### 16 **CLASS ACTION ALLEGATIONS**

17 44. Plaintiffs bring this action on their own behalf, as well as on behalf of each and  
18 all other persons similarly situated, and thus seeks class certification under California Code of  
19 Civil Procedure section 382.

20 45. All claims alleged herein arise under California law for which Plaintiffs seek  
21 relief authorized by California law.

22 46. Plaintiffs’ proposed class consists of and is defined as follows:

23 All persons who worked for Defendants as nonexempt, hourly-  
24 paid employees in California, within four years prior to the filing  
of this complaint until the date of trial (“Class”).

25 47. Plaintiffs’ proposed subclass consists of and is defined as follows:

26 All persons who worked for Defendants as nonexempt, hourly-  
27 paid employees in California, within one year prior to the filing  
of this complaint until the date of trial (“Subclass”).

28 48. Members of the Class and Subclass are referred to herein as “class members.”

1           49.     Plaintiffs reserve the right to redefine the Class and to add additional subclasses  
2 as appropriate based on further investigation, discovery, and specific theories of liability.

3           50.     There are common questions of law and fact as to class members that  
4 predominate over questions affecting only individual members, including, but not limited to:

- 5           (a)     Whether Defendants required Plaintiffs and class members to work over  
6                   eight (8) hours per day, over twelve (12) hours per day, or over forty  
7                   (40) hours per week and failed to pay all legally required overtime  
8                   compensation to Plaintiffs and class members;
- 9           (b)     Whether Defendants failed to pay Plaintiffs and class members at least  
10                  minimum wages for all hours worked;
- 11           (c)     Whether Defendants failed to provide Plaintiffs and class members with  
12                  meal periods;
- 13           (d)     Whether Defendants failed to provide Plaintiffs and class members with  
14                  rest periods;
- 15           (e)     Whether Defendants provided Plaintiffs and class members with  
16                  complete and accurate wage statements as required by California Labor  
17                  Code section 226(a);
- 18           (f)     Whether Defendants failed to pay earned overtime wages, minimum  
19                  wages, and meal and rest period premiums due to Plaintiffs and class  
20                  members upon their discharge;
- 21           (g)     Whether Defendants failed timely to pay overtime wages, minimum  
22                  wages, and meal and rest period premiums to Plaintiffs and class  
23                  members during their employment;
- 24           (h)     Whether Defendants failed to pay Plaintiffs and class members for the  
25                  costs of mandatory physical examinations and drug testing;
- 26           (i)     Whether Defendants reimbursed Plaintiffs and class members for  
27                  business-related expenses they incurred as a result of their employment;
- 28           (j)     Whether Defendants engaged in unlawful and unfair business practices

1 in violation of California Business & Professions Code sections 17200,  
2 *et seq.*; and

- 3 (k) The appropriate amount of damages, restitution, or monetary penalties  
4 resulting from Defendants' violations of California law.

5 51. There is a well-defined community of interest in the litigation and the class  
6 members are readily ascertainable:

- 7 (a) Numerosity: The class members are so numerous that joinder of all  
8 members would be unfeasible and impractical. The membership of the  
9 entire class is unknown to Plaintiffs at this time; however, the class is  
10 estimated to be greater than one hundred (100) individuals and the  
11 identity of such membership is readily ascertainable by inspection of  
12 Defendants' employment records.
- 13 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately  
14 protect the interests of each class member with whom they have a well-  
15 defined community of interest, and Plaintiffs' claims (or defenses, if  
16 any) are typical of all class members as demonstrated herein.
- 17 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately  
18 protect the interests of each class member with whom they have a well-  
19 defined community of interest and typicality of claims, as demonstrated  
20 herein. Plaintiffs acknowledge that they have an obligation to make  
21 known to the Court any relationship, conflicts or differences with any  
22 class member. Plaintiffs' attorneys, the proposed class counsel, are  
23 versed in the rules governing class action discovery, certification, and  
24 settlement. Plaintiffs have incurred, and throughout the duration of this  
25 action, will continue to incur costs and attorneys' fees that have been,  
26 are, and will be necessarily expended for the prosecution of this action  
27 for the substantial benefit of each class member.
- 28 (d) Superiority: The nature of this action makes the use of class action

1 adjudication superior to other methods. A class action will achieve  
2 economies of time, effort, and expense as compared with separate  
3 lawsuits, and will avoid inconsistent outcomes because the same issues  
4 can be adjudicated in the same manner and at the same time for the  
5 entire class.

6 (e) Public Policy Considerations: Employers in the State of California  
7 violate employment and labor laws every day. Current employees are  
8 often afraid to assert their rights out of fear of direct or indirect  
9 retaliation. Former employees are fearful of bringing actions because  
10 they believe their former employers might damage their future  
11 endeavors through negative references and/or other means. Class  
12 actions provide the class members who are not named in the complaint  
13 with a type of anonymity that allows for the vindication of their rights  
14 while simultaneously protecting their privacy.

### 15 **FIRST CAUSE OF ACTION**

#### 16 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

#### 17 **(Against all Defendants)**

18 52. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
19 allegation set forth above.

20 53. Labor Code section 1198 makes it illegal to employ an employee under  
21 conditions of labor that are prohibited by the applicable wage order. California Labor Code  
22 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall  
23 be the . . . standard conditions of labor for employees. The employment of any employee . . .  
24 under conditions of labor prohibited by the order is unlawful.”

25 54. California Labor Code section 1198 and the applicable IWC Wage Order  
26 provide that it is unlawful to employ persons without compensating them at a rate of pay  
27 either time-and-one-half or two-times that person’s regular rate of pay, depending on the  
28 number of hours worked by the person on a daily or weekly basis.

1           55.     Specifically, the applicable IWC Wage Order provides that Defendants are and  
2 were required to pay Plaintiffs and class members working more than eight (8) hours in a day  
3 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all  
4 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a  
5 workweek.

6           56.     The applicable IWC Wage Order further provides that Defendants are and were  
7 required to pay Plaintiffs and class members working more than twelve (12) hours in a day,  
8 overtime compensation at a rate of two (2) times their regular rate of pay, and required to pay  
9 Plaintiffs and other class members at a rate of two (2) times their regular rate of pay for hours  
10 worked in excess of eight (8) hours on the seventh (7th) consecutive day of a work in a  
11 workweek. An employee's regular rate of pay includes all remuneration for employment paid  
12 to, or on behalf of, the employee, including commissions, non-discretionary bonuses and  
13 incentive pay.

14           57.     California Labor Code section 510 codifies the right to overtime compensation  
15 at one-and-one-half times the regular rate of pay for hours worked in excess of eight (8) hours  
16 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day  
17 of work, and to overtime compensation at twice the regular rate of pay for hours worked in  
18 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day  
19 of work.

20           58.     At all relevant times, Defendants willfully failed to pay all overtime wages  
21 owed to Plaintiffs and class members. At all relevant times, Plaintiffs and class members  
22 were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours  
23 in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a  
24 week, because all hours worked were not recorded.

25           59.     Defendants have a company-wide policy and/or practice of staffing their  
26 clients' facilities strictly based on the labor hours allotted by each facility's labor or payroll  
27 budget, which has resulted in and continues to result in chronic understaffing and a lack of  
28 break and shift coverage, because there are too few employees on duty to handle the

1 workload. Upon information and belief, Defendants' labor budgets do not account for the  
2 provision of adequate meal period coverage for employees and instead result in chronic  
3 understaffing of the facilities and non-compliant meal periods.

4 60. Defendants' failure to provide adequate meal break coverage for Plaintiffs and  
5 class members such that they could be relieved of their duties to take all timely, uninterrupted  
6 thirty (30) minute meal periods, led to them working off-the-clock during meal periods to  
7 complete their assigned tasks. Thus, Plaintiffs and class members were not able to take  
8 compliant meal period(s).

9 61. For example, Plaintiffs were often the only custodial employee assigned to a  
10 building during all or part of their typical shifts, and was required to respond to urgent matters  
11 at all times. Because Defendants failed to schedule additional staff to relieve Plaintiff, they  
12 were prevented from taking uninterrupted 30-minute meal periods. Defendants' systemic  
13 understaffing forced Plaintiffs and class members to work during all or part of their meal  
14 periods to complete their job duties such as cleaning furniture, rooms and hallways, emptying  
15 trash receptacles, and maintaining storage closets. Further, Defendants' failure to provide  
16 adequate meal break coverage to Plaintiffs and class members at its clients' facilities also  
17 prevented Plaintiffs and other class members from taking uninterrupted meal breaks. For  
18 example, if a prisoner was in a common area, Plaintiffs could not leave for a meal break.

19 62. Defendants also had a company-wide policy and/or practice of requiring  
20 Plaintiffs and class members to carry radios and/or pagers at all times during their shifts and  
21 respond to any calls and pages at all times during their shifts. Defendants' requirement that  
22 Plaintiffs and class members be available via radio and/or pager at all times prevented  
23 Plaintiffs and class members from being relieved of their duties for meal periods. For  
24 example, Plaintiff Payton would receive calls on her radio for various reasons while  
25 attempting to take a meal period and had to respond.

26 63. Moreover, Defendants had a company-wide practice and/or policy of failing to  
27 schedule second meal periods. As a result, on days that Plaintiffs and class members worked  
28 in excess of 10 hours, they were not provided with second 30-minute meal periods. Plaintiffs

1 and class members did not sign valid meal break waivers on days that they were entitled to  
2 meal periods but were not relieved of all duties.

3 64. Defendants knew or should have known that as a result of its policies, that  
4 Plaintiffs and class members were performing some of their assigned duties off-the-clock  
5 and/or during meal periods and were suffered or permitted to perform work for which they  
6 were not paid. Defendants also knew, or should have known, that it did not compensate  
7 Plaintiffs and other class members for this off-the-clock work. Because Plaintiffs and class  
8 members sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a week  
9 or more, some of this off-the-clock work qualified for overtime premium pay. Therefore,  
10 Plaintiffs and class members were not paid overtime wages for all of the overtime hours they  
11 worked.

12 65. Defendants' failure to pay Plaintiffs and class members the balance of overtime  
13 compensation and failure to correctly calculate the regular rate of pay for overtime pay, as  
14 required by California law, violates the provisions of California Labor Code sections 510 and  
15 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class members are  
16 entitled to recover their unpaid overtime compensation, as well as interest, costs, and  
17 attorneys' fees.

## 18 **SECOND CAUSE OF ACTION**

### 19 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid**

#### 20 **Minimum Wages**

#### 21 **(Against All Defendants)**

22 66. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
23 and every allegation set forth above.

24 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,  
25 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the  
26 minimum wage to be paid to employees, and the payment of a wage less than the minimum so  
27 fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time  
28 during which an employee is subject to the control of an employer, and includes all the time

1 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.  
2 Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

3 68. As described above, due to Defendants’ company-wide staffing and scheduling  
4 practices and policies, and resultant lack of meal break coverage, Plaintiffs and class members  
5 were forced to forego meal periods and/or have their meal periods interrupted by work, and  
6 were not relieved of all duties for unpaid meal periods, in order to assist staff with urgent  
7 sanitation needs. Defendants’ company-wide policy requiring Plaintiffs and class members to  
8 carry radios and/or pagers at all times and to respond to calls to their radios and/or pagers at  
9 all times also prevented Plaintiffs and class members from taking uninterrupted meal periods.

10 69. During the relevant time period, Defendants also maintained and implemented  
11 a company-wide policy of requiring all new employees to undergo a mandatory drug test and  
12 TB test as a condition of employment. At all times, upon information and belief, Defendants  
13 were in control of scheduling the date and time for the tests, selecting the provider or facility  
14 where the tests were to take place, and determining the scope of the tests. Defendants gave  
15 Plaintiffs and class members strict instructions to obtain drug tests and TB tests as a condition  
16 of their employment, and Plaintiffs and class members underwent the testing for the sole  
17 benefit of Defendants. However, Defendants did not compensate Plaintiffs and class members  
18 for the time they spent traveling to and from the testing facility or for the time they spent  
19 undergoing drug testing and TB testing. Plaintiff Payton spent two (2) hours traveling to the  
20 designated drug testing facility and undergoing a drug test. Plaintiff Payton spent an  
21 additional two (2) hours traveling to the same designated testing facility and retrieving TB test  
22 results. Defendants did not compensate Plaintiff Payton for this time.

23 70. Defendants did not pay at least minimum wages for all hours worked by  
24 Plaintiffs and class members. To the extent that these off-the-clock hours did not qualify for  
25 overtime premium payment, Defendants did not pay at least minimum wages for those hours  
26 worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197,  
27 1197.1, and 1198. Accordingly, Defendants regularly failed to pay at least minimum wages to  
28 Plaintiffs and class members for all of the hours they worked.

71. Defendants' failure to pay Plaintiffs and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

### THIRD CAUSE OF ACTION

**Violations of California Labor Code, §§ 226.7, 512(a), and 1198—Meal Period Violations**  
**(Against all Defendants)**

72. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

73. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

74. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

75. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198 and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

76. During the relevant time period, on information and belief, Defendants implemented a company-wide policy and practice of automatically deducting meal periods

1 from Plaintiffs' and class members' time records. As a result of this policy, Defendants  
2 clocked Plaintiffs and class members out for full 30 minutes meal periods even when meal  
3 periods were missed, short, and/or interrupted.

4 77. In the alternative, on information and belief, Defendants manually adjusted  
5 employee wage records in order to make it appear that Plaintiffs and class members routinely  
6 received compliant 30-minute meal breaks when in fact, they did not.

7 78. Additionally, as mentioned above, Defendants' company-wide failure to  
8 provide adequate meal break coverage and requirement that employees carry radios and/or  
9 pagers at all times prevented Plaintiffs and class members from being relieved of all duties  
10 and taking compliant meal periods. As a result of these practices and/or policies, Plaintiffs  
11 and class members were frequently required to continue to perform their duties, such as  
12 cleaning furniture, rooms and hallways, emptying trash receptacles, maintaining storage  
13 closets and responding to radio and/or pager calls, without being able to take timely,  
14 compliant meal periods. Further, on information and belief, Plaintiffs and class members did  
15 not sign valid meal break waivers on days that they were entitled to meal periods and were not  
16 relieved of all duties.

17 79. At all times herein mentioned, Defendants knew or should have known that, as  
18 a result of these policies, Plaintiffs and class members have been required to perform some of  
19 their assigned duties during meal periods and that Defendants did not pay Plaintiffs and class  
20 members meal period premium wages when meal periods were late, interrupted, and/or  
21 missed. As a result, Plaintiffs and class members had to work through some or all of their  
22 meal periods, have their meal periods interrupted to return to work, and/or wait extended  
23 periods of time before taking meal periods.

24 80. For example, Plaintiffs missed meal periods entirely 3-4 times per week  
25 because the facility's security protocols did not permit her to leave her building. Plaintiff  
26 Payton was made to work over five (5) hours straight before Defendants permitted and  
27 authorized her to take their meal periods approximately 1-2 times per week. Plaintiff Payton's  
28 meal periods were interrupted two (2) times per week with urgent cleaning requests.

81. Furthermore, Plaintiffs and class members were not permitted to take a second thirty (30) minute uninterrupted meal period on days that they worked over ten (10) hours because second meal periods were not scheduled. Plaintiffs and class members did not sign valid meal break waivers on days that they were entitled to meal periods and were not relieved of all duties.

82. Moreover, upon information and belief, Defendants engaged in a systematic, company-wide practice and/or policy of not paying meal period premiums for Plaintiffs and class members, regardless of whether they were able to take a compliant meal break, in violation of the applicable IWC Wage Order and Labor Code sections 226.7 and 512(a). As a result, Defendants failed to provide Plaintiffs and class members compliant meal periods in violation of California Labor Code sections 226.7 and 512 and failed to pay the full meal period premiums due.

83. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

#### FOURTH CAUSE OF ACTION

**Violation of California Labor Code §§ 226.7 and 1198—Rest Break Violations**  
**(Against all Defendants)**

84. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

85. At all relevant times, the applicable IWC Wage Order and California Labor Code sections 226.7 and 1198 were applicable to Plaintiffs and class members employed by Defendants.

86. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

1 hours or major fraction thereof” unless the total daily work time is less than three and one-half  
2 (3½) hours.

3 87. At all relevant times, California Labor Code section 226.7 provides that no  
4 employer shall require an employee to work during any rest period mandated by an applicable  
5 order of the California IWC. To comply with its obligation to provide rest periods under  
6 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must  
7 “relinquish any control over how employees spend their break time, and relieve their  
8 employees of all duties — including the obligation that an employee remain on call. A rest  
9 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th  
10 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code  
11 section 226.7(b), Plaintiffs and class members are entitled to recover from Defendants one (1)  
12 additional hour of pay at their regular rates of pay for each work day that a required rest  
13 period was not provided.

14 88. At all relevant times, Defendants’ scheduling policies and practices, or lack  
15 thereof, prevented Plaintiffs and class members from being relieved of all duty in order to take  
16 compliant rest periods. Defendants failed to schedule rest periods for Plaintiffs and class  
17 members on a company-wide basis. As a result, Plaintiffs would work shifts in excess of 3.5  
18 hours and in excess of 6 hours without receiving all uninterrupted ten (10) minute rest periods  
19 to which they were entitled. Plaintiffs and class members also worked shifts in excess of 3.5  
20 hours or 6 hours without receiving all uninterrupted ten (10) minute rest periods to which they  
21 were entitled. For example, throughout her employment, Plaintiff Payton would work through  
22 most of her shifts without taking a ten (10) minute rest period, because she was under pressure  
23 to finish cleaning her assigned building by the end of her shift. In addition, because  
24 Defendant required Plaintiffs and class members to carry radios and/or pagers at all times and  
25 respond at all times, Plaintiffs and class members were not relieved of all duties during rest  
26 periods.

27 89. Defendants have also engaged in a systematic, company-wide practice and/or  
28 policy of not paying rest period premiums owed when rest periods are not provided. Because

1 of this practice and/or policy, Plaintiffs and class members have not received premium pay for  
2 missed rest periods. Thus, Defendants denied Plaintiffs and class members rest periods and  
3 failed to pay them rest period premium wages due, in violation of Labor Code section 226.7  
4 and the applicable IWC Wage Order.

5 90. Defendants' conduct violates the applicable IWC Wage Order and California  
6 Labor Code sections 226.7 and 1198. Plaintiffs and class members are therefore entitled to  
7 recover from Defendants one (1) additional hour of pay at the employee's regular rate of  
8 compensation for each work day that the rest period was not provided.

9 **FIFTH CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage**  
11 **Statements and Failure to Maintain Accurate Payroll Records**  
12 **(Against all Defendants)**

13 91. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
14 and every allegation set forth above.

15 92. At all relevant times herein set forth, California Labor Code section 226(a)  
16 provides that every employer shall furnish each of his or her employees an accurate and  
17 complete itemized wage statement in writing, including, but not limited to, the name and  
18 address of the legal entity that is the employer, the inclusive dates of the pay period, total  
19 hours worked, and all applicable rates of pay.

20 93. During the relevant time period, Defendants have knowingly and intentionally  
21 provided Plaintiffs and class members with uniform, incomplete, and inaccurate wage  
22 statements. Specifically, Defendants violated sections 226(a)(1) and 226(a)(5).

23 94. Because Defendants deducted time from Plaintiffs' and class members' records  
24 for meal periods that were interrupted or missed (and therefore time for which they should  
25 have been paid), Defendants did not list the correct amount of gross wages earned by  
26 Plaintiffs and class members in compliance with section 226(a)(1). For the same reason,  
27 Defendants failed to list the correct amount of net wages earned by Plaintiffs and class  
28 members in violation of section 226(a)(5).

1           95.     The wage statement deficiencies also include, without limitation, failing to list  
2 total hours worked by employees; failing to list the number of piece-rate units earned and any  
3 applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions;  
4 failing to list the name of the employee and only the last four digits of his or her social  
5 security number or an employee identification number other than a social security number;  
6 failing to list the name and address of the legal entity that is the employer; failing to list the  
7 inclusive dates of the period for which employees were paid; and/or failing to state all hours  
8 worked as a result of not recording or stating the hours they worked off-the-clock.

9           96.     California Labor Code section 1198 provides that the maximum hours of work  
10 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as  
11 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he  
12 employment of any employees for longer hours than those fixed by the order or under  
13 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC  
14 Wage Order, employers are required to keep accurate time records showing when the  
15 employee begins and ends each work period and meal period. During the relevant time  
16 period, Defendants failed, on a company-wide basis, to keep accurate records of meal period  
17 start and stop times for Plaintiffs and class members in violation of section 1198. Defendants  
18 engaged in a practice of recording a 30-minute period for employees for first meal periods  
19 regardless of whether employees actually took a timely, compliant break.

20           97.     California Labor Code section 1174(d) provides that “[e]very person employing  
21 labor in this state shall ... [k]eep a record showing the names and addresses of all employees  
22 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the  
23 plants or establishments at which employees are employed, payroll records showing the hours  
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
25 applicable piece rate paid to, employees employed at the respective plants or  
26 establishments...” During the relevant time period, and in violation of Labor Code section  
27 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiffs and  
28 class members showing the daily hours they worked and the wages paid thereto as a result of

1 failing to record the off-the-clock hours that they worked.

2 98. Because Defendants failed to provide the accurate number of total hours  
3 worked on wage statements, Plaintiffs and class members have been prevented from verifying,  
4 solely from information on the wage statements themselves, that they were paid correctly and  
5 in full. Instead, Plaintiffs and class members have had to look to sources outside of the wage  
6 statements themselves and reconstruct time records to determine whether in fact they were  
7 paid correctly and the extent of underpayment, thereby causing them injury.

8 99. Plaintiffs and class members are entitled to recover from Defendants the greater  
9 of their actual damages caused by Defendants' failure to comply with California Labor Code  
10 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per  
11 employee.

## 12 **SIXTH CAUSE OF ACTION**

### 13 **Violation of California Labor Code §§ 201, 202, and 203 – Wages Not Timely Paid Upon**

#### 14 **Termination**

#### 15 **(Against all Defendants)**

16 100. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
17 and every allegation set forth above.

18 101. This cause of action is dependent upon, and wholly derivative of, the overtime  
19 wages, minimum wages, and meal and rest period premium wages that were not timely paid to  
20 Plaintiffs and those class members no longer employed by Defendants upon their termination.

21 102. At all times relevant herein set forth, Labor Code sections 201 and 202 provide  
22 that if an employer discharges an employee, the wages earned and unpaid at the time of  
23 discharge are due and payable immediately, and that if an employee voluntarily leaves his or  
24 her employment, his or her wages shall become due and payable not later than seventy-two  
25 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of  
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the  
27 time of quitting.

28 103. During the relevant time period, Defendants willfully failed to pay Plaintiffs

1 and class members who are no longer employed by Defendants the earned and unpaid wages  
2 set forth above, including but not limited to, overtime wages, minimum wages, and meal and  
3 rest period premium wages, either at the time of discharge, or within seventy-two (72) hours  
4 of their leaving Defendants' employ.

5 104. Defendants' failure to pay Plaintiffs and those class members who are no  
6 longer employed by Defendants their wages earned and unpaid at the time of discharge, or  
7 within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code  
8 sections 201 and 202. Plaintiffs and class members are therefore entitled to recover from  
9 Defendants the statutory penalty wages for each day they were not paid, at their regular rate of  
10 pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

#### 11 SEVENTH CAUSE OF ACTION

#### 12 Violation of California Labor Code § 2802 – Unpaid Business-Related Expenses 13 (Against all Defendants)

14 105. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
15 and every allegation set forth above.

16 106. At all times herein set forth, California Labor Code section 2802 provides that  
17 an employer must reimburse employees for all necessary expenditures and losses incurred by  
18 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is  
19 to prevent employers from passing off their cost of doing business and operating expenses on  
20 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144  
21 (2014).

22 107. At all relevant times, Defendants, on a company-wide basis, required that  
23 Plaintiffs and class members to utilize their own personal vehicles to carry out company  
24 business, but Defendants failed to reimburse them for all costs of travel, including mileage.  
25 For example, Plaintiff Payton was required to drive roundtrip on several occasions to an off-  
26 site location for mandatory training using her own vehicle. Although Defendants required that  
27 Plaintiff Payton use her own vehicle and complete this task as part of her job duties,  
28 Defendants never reimbursed her for all her travel expenses.

108. Defendants engaged in a systematic, company-wide policy to not reimburse its employees for necessary business expenses. Defendants could have provided Plaintiffs and class members reimbursements for gas expenses, but instead, Defendants passed these operating costs off onto Plaintiffs and class members.

109. Defendants' policy and/or practice of passing its operating costs on to Plaintiffs and class members is in violation of California Labor Code section 2802. Defendants have intentionally and willfully failed to fully reimburse Plaintiffs and class members for necessary business-related expenses and costs.

110. Plaintiffs and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

#### **EIGHTH CAUSE OF ACTION**

##### **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

##### **(Against all Defendants)**

111. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

112. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 1182.12 and 2810.5.

113. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff Walker and other aggrieved employees with all required overtime pay and failure to

properly calculate the overtime rates paid to Plaintiff Walker and other aggrieved employees, as alleged herein;

- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff Walker and other aggrieved employees with at least minimum wages for all hours worked as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff Walker and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff Walker and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff Walker and other aggrieved employees, as alleged herein;
- (f) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;
- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as alleged herein;
- (i) Violation of Labor Code section 222.5 for failing to pay the costs of mandatory drug tests and/or physical examinations as set forth below; and
- (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff Walker and other aggrieved employees for all business expenses

necessarily incurred, as alleged herein; and

- (a) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff Walker's and other aggrieved employees' employment with Defendants, as set forth below.

114. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

115. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

116. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

117. At all relevant times herein, Defendants willfully failed to pay Plaintiff Walker and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, rest period premium wages, and reporting time pay, within the time periods specified by California Labor Code section 204. Plaintiff Walker and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g)

118. At all times herein set forth, California Labor Code section 222.5 requires

1 employers to pay for the costs an employee incurs for obtaining any required medical or  
2 physical examination.

3 119. During the relevant time period, Defendants implemented, on a company-wide  
4 basis, an employer-imposed requirement that Plaintiff Walker and other aggrieved employees  
5 undergo mandatory drug tests, physical examinations, and/or TB testing, but required them to do  
6 so at their own expense. As stated, Defendants had a company-wide policy requiring that Plaintiff  
7 Walker and other aggrieved employees travel to a specified medical clinic on their own time and  
8 use their own means of transportation to undergo drug testing, physical examinations, and/or TB  
9 testing. At all times, Defendants was in control of scheduling the date and time for the drug,  
10 physical examinations, and/or TB testing, selecting the provider/facility where the drug testing,  
11 physical examinations, and/or TB testing were to take place, and determining the scope of the  
12 drug test, physical examinations, and/or TB testing.

13 120. For example, Plaintiff Walker was instructed by Defendants to travel to a medical  
14 clinic in Roseville, California, and obtain a drug test, physical examination, and/or TB test.  
15 Plaintiff Walker followed Defendants' instructions, traveled to the clinic Defendants selected, and  
16 underwent the testing and/or physical examination. Plaintiff Walker was required to travel to and  
17 from a medical clinic selected by Defendants using her own vehicle. Plaintiff Walker followed  
18 Defendants' instructions and drove several miles roundtrip to and from the medical clinic  
19 designated by Defendants, and then spent approximately two (2) hours waiting at the medical  
20 clinic and undergoing the requisite testing and/or examinations.

21 121. Defendants did not compensate Plaintiff Walker and other aggrieved employees  
22 for the time they spent traveling to and from their drug testing, physical examinations, and/or TB  
23 testing, or for the time they spent undergoing the testing and/or examinations, or reimburse them  
24 for the travel expenses they incurred getting to and from the medical clinics. Defendants' policy  
25 and/or practice of not paying for all costs Plaintiff Walker and other aggrieved employees incurred  
26 obtaining mandatory drug testing, physical examinations, and/or TB testing violates California  
27 Labor Code section 222.5. Plaintiff Walker and other aggrieved employees are therefore  
28 entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f)-(g).

122. California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

123. Defendants failed to provide Plaintiff Walker and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff Walker and other aggrieved employees with the rate or rates of pay, including any rates for overtime, as applicable, in violation of section 2810.5(a)(1)(A).

124. Defendants' failure to provide Plaintiff Walker and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff Walker and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f), and (g)

## NINTH CAUSE OF ACTION

**Violation of California Business & Professions Code §§ 17200, *et seq.* –**

## Unlawful Business Practices

**(Against all Defendants)**

125. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

126. Defendants are a “person” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies

1 and/or associations.

2 127. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
3 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiffs have  
4 suffered injury in fact and have lost money as a result of Defendants' unlawful business  
5 practices. Plaintiffs seek to enforce important rights affecting the public interest within the  
6 meaning of Code of Civil Procedure section 1021.5.

7 128. Defendants' activities, as alleged herein, are violations of California law, and  
8 constitute unlawful business acts and practices in violation of California Business &  
9 Professions Code sections 17200, *et seq.*

10 129. A violation of California Business & Professions Code sections 17200, *et seq.*  
11 may be predicated on the violation of any state or federal law. In the instant case, Defendants'  
12 policies and practices have violated state law in at least the following respects:

- 13 (a) Requiring non-exempt employees, including Plaintiffs and class  
14 members, to work overtime without paying them proper compensation  
15 in violation of California Labor Code sections 510 and 1198 and the  
16 applicable IWC Order, as alleged herein;
- 17 (b) Failing to pay at least minimum wage to Plaintiffs and class members in  
18 violation of California Labor Code sections 1182.12, 1194, 1197,  
19 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 20 (c) Failing to provide uninterrupted meal and rest periods to Plaintiffs and  
21 class members in violation of California Labor Code sections 226.7,  
22 512(a), 1198, and the applicable IWC Order, as alleged herein;
- 23 (d) Failing to provide Plaintiffs and class members with accurate wage  
24 statements and failing to maintain accurate payroll records in violation  
25 of California Labor Code sections 226(a), 1174(d), 1198, and the  
26 applicable IWC Order, as alleged herein;
- 27 (e) Failing timely to pay all earned wages to Plaintiffs and class members in  
28 violation of California Labor Code section 204 and the applicable IWC

Order, as set forth below;

- (f) Failing to pay the costs of mandatory pre-employment physical examinations and drug testing in violation of California Labor Code section 222.5, as set forth below;
- (g) Failing to reimburse Plaintiffs and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein; and
- (h) Failing to provide written notice of information material to Plaintiffs and class members' employment with Defendants in violation of Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

130. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

131. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

132. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

133. At all relevant times herein, Defendants willfully failed to pay Plaintiffs and class members all wages due including, but not limited to, overtime wages, minimum wages,

1 and meal and rest period premium wages, within the time periods specified by California  
2 Labor Code section 204.

3 134. At all relevant times herein, California Labor Code section 222.5 requires  
4 employers to pay for the costs a prospective employee incurs for obtaining any pre-  
5 employment medical or physical examination taken as a condition of employment.

6 135. During the relevant time period, Defendants implemented, on a company-wide  
7 basis, an employer-imposed requirement that Plaintiffs and class members undergo a  
8 mandatory drug test and TB test as a condition of employment, but required them to do so at  
9 their own expense. As stated, upon information and belief, Defendants had a company-wide  
10 policy requiring that all new employees, including Plaintiffs and class members, travel to a  
11 medical clinic on their own time and using their own means of transportation to undergo drug  
12 testing and/or physical examinations. At all times, upon information and belief, Defendants  
13 were in control of scheduling the date and time for the drug testing, selecting the  
14 provider/facility where the drug testing was to take place, and determining the scope of the  
15 physical examination and drug test. However, Defendants did not compensate Plaintiffs and  
16 class members for the time they spent traveling to and from drug testing, for the time they  
17 spent undergoing drug testing or for the travel expenses they incurred getting to and from the  
18 medical clinic.

19 136. As stated, Plaintiff Payton spent four (4) hours traveling to and undergoing the  
20 required drug test and retrieving her TB test results. However, Defendants did not  
21 compensate Plaintiff Payton for this time or reimburse her for her travel expenses to and from  
22 the clinic.

23 137. At all relevant times herein, California's Wage Theft Prevention Act was  
24 enacted to ensure that employers provide employees with basic information material to their  
25 employment relationship at the time of hiring, and to ensure that employees are given written  
26 and timely notice of any changes to basic information material to their employment. Codified  
27 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the  
28 time of hiring, an employer must provide written notice to employees containing basic and

1 material payroll information, including, among other things, the rate(s) of pay and basis  
2 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,  
3 including any rates for overtime, the regular payday designated by the employer, and any  
4 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor  
5 Code § 2810.5(a)(1)(A)-(C).

6 138. At all relevant times, Defendants failed to provide written notice to Plaintiffs  
7 and class members that lists the requisite information set forth in Labor Code section  
8 2810.5(a)(1)(A)-(C) on a company-wide basis.

9 139. Defendants' failure to provide Plaintiffs and class members with written notice  
10 of basic information regarding their employment with Defendants is in violation of Labor  
11 Code section 2810.5.

12 140. As a result of the violations of California law herein described, Defendants  
13 unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members  
14 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged  
15 herein.

16 141. Pursuant to California Business & Professions Code sections 17200 *et seq.*,  
17 Plaintiffs and class members are entitled to restitution of the wages withheld and retained by  
18 Defendants during a period that commences four years prior to the filing of this complaint; a  
19 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and  
20 class members; and an award of attorneys' fees pursuant to California Code of Civil  
21 Procedure section 1021.5 and other applicable laws; and an award of costs.

## 22 **TENTH CAUSE OF ACTION**

### 23 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

#### 24 **Unfair Business Practices**

#### 25 **(Against all Defendants)**

26 142. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
27 and every allegation set forth above.

28 143. Defendants are a "person" as defined by California Business & Professions

1 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,  
2 and/or associations.

3 144. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
4 and harmful to Plaintiff, class members, and to the general public. Plaintiffs have suffered  
5 injury in fact and have lost money as a result of Defendants' unfair business practices.  
6 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of  
7 Code of Civil Procedure section 1021.5.

8 145. Defendants' activities, namely Defendants' company-wide practice and/or  
9 policy of not paying Plaintiffs and class members all meal and rest period premium wages due  
10 to them under Labor Code section 226.7, deprived Plaintiffs and class members of the  
11 compensation guarantee and enhanced enforcement implemented by section 226.7. The  
12 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to  
13 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*  
14 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were  
15 guaranteed to Plaintiffs and class members as part of their employment with Defendants, and  
16 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an  
17 unfair business practice in violation of California Business & Professions Code sections  
18 17200, *et seq.* (Id.)

19 146. A violation of California Business & Professions Code sections 17200, *et seq.*  
20 may be predicated on any unfair business practice. In the instant case, Defendants' policies  
21 and practices have violated the spirit of California's meal and rest break laws and constitute  
22 acts against the public policy behind these laws.

23 147. Pursuant to California Business & Professions Code sections 17200 *et seq.*,  
24 Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory  
25 benefits implemented by section 226.7 withheld and retained by Defendants during a period  
26 that commences four years prior to the filing of this complaint; a permanent injunction  
27 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to  
28 Plaintiffs and class members; an award of attorneys' fees pursuant to California Code of Civil

1 Procedure section 1021.5 and other applicable laws; and an award of costs.

2 **REQUEST FOR JURY TRIAL**

3 Plaintiffs request a trial by jury.

4 **PRAYER FOR RELIEF**

5 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment  
6 against Defendants, jointly and severally, as follows:

7 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in  
8 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs  
9 reserve the right to amend their prayer for relief to seek a different amount.

10 **Class Certification**

11 2. That this case be certified as a class action;

12 3. That Plaintiffs be appointed as the representatives of the Class and subclass;

13 4. That counsel for Plaintiffs be appointed as class counsel.

14 **As to the First Cause of Action**

15 5. That the Court declare, adjudge, and decree that Defendants violated California  
16 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to  
17 pay all overtime wages due to Plaintiffs and class members;

18 6. For general unpaid wages at overtime wage rates and such general and special  
19 damages as may be appropriate;

20 7. For pre-judgment interest on any unpaid overtime compensation commencing  
21 from the date such amounts were due, or as otherwise provided by law;

22 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
23 California Labor Code section 1194(a); and

24 9. For such other and further relief as the Court may deem equitable and  
25 appropriate.

26 **As to the Second Cause of Action**

1           10.     That the Court declare, adjudge and decree that Defendants violated California  
2 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay  
3 minimum wages to Plaintiffs and class members;

4           11.     For general unpaid wages and such general and special damages as may be  
5 appropriate;

6           12.     For pre-judgment interest on any unpaid compensation from the date such  
7 amounts were due, or as otherwise provided by law;

8           13.     For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
9 California Labor Code section 1194(a);

10          14.     For liquidated damages pursuant to California Labor Code section 1194.2; and

11          15.     For such other and further relief as the Court may deem equitable and  
12 appropriate.

13 //

14                   **As to the Third Cause of Action**

15          16.     That the Court declare, adjudge, and decree that Defendants violated California  
16 Labor Code sections 226.7, 512(a), and 1198 and applicable IWC Wage Order(s) by willfully  
17 failing to provide all meal periods to Plaintiffs and class members;

18          17.     That the Court make an award to the Plaintiffs and class members of one (1)  
19 hour of pay at each employee's regular rate of pay for each workday that a meal period was  
20 not provided;

21          18.     For all actual, consequential, and incidental losses and damages, according to  
22 proof;

23          19.     For premiums pursuant to California Labor Code section 226.7(b);

24          20.     For pre-judgment interest on any unpaid meal period premiums from the date  
25 such amounts were due, or as otherwise provided by law;

26          21.     For attorneys' fees pursuant to California Code of Civil Procedure section  
27 1021.5, or as otherwise provided by law; and  
28

22. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Fourth Cause of Action**

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 1198 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and class members;

24. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not provided;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(b);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Fifth Cause of Action**

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiffs and class members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section

1 226(e)(1); and

2 35. For such other and further relief as the Court may deem equitable and  
3 appropriate.

4 **As to the Sixth Cause of Action**

5 36. That the Court declare, adjudge and decree that Defendants violated California  
6 Labor Code sections 201, 202, and 203 by willfully failing to pay overtime wages, minimum  
7 wages, and meal and rest period premiums owed at the time of termination of the employment  
8 of Plaintiffs and other terminated class members;

9 37. For all actual, consequential and incidental losses and damages, according to  
10 proof;

11 38. For waiting time penalties according to proof pursuant to California Labor  
12 Code section 203 for all employees who have left Defendants' employ;

13 39. For pre-judgment interest on any unpaid wages from the date such amounts  
14 were due, or as otherwise provided by law;

15 40. For attorneys' fees pursuant to California Code of Civil Procedure section  
16 1021.5, or as otherwise provided by law; and

17 41. For such other and further relief as the Court may deem equitable and  
18 appropriate.

19 **As to the Seventh Cause of Action**

20 42. That the Court declare, adjudge and decree that Defendants violated California  
21 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-  
22 related expenses and costs incurred by Plaintiffs and class members;

23 43. For unpaid business-related expenses and such general and special damages as  
24 may be appropriate;

25 44. For pre-judgment interest on any unpaid business-related expenses from the  
26 date such amounts were due, or as otherwise provided by law;

27 45. For all actual, consequential, and incidental losses and damages, according to  
28 proof;

1           46.     For attorneys' fees and costs pursuant to California Labor Code section  
2 2802(c), or as otherwise provided by law; and

3           47.     For such other and further relief as the Court may deem equitable and  
4 appropriate.

5                                   **As to the Eighth Cause of Action**

6           48.     That the Court declare, adjudge and decree that Defendants violated the  
7 following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:  
8 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and  
9 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512 and 1198 (by  
10 failing to provide all meal periods); 226.7 and 1198 (by failing to authorize and permit all rest  
11 periods); 226(a), 1174(d) and 1198 (by failing to provide accurate wage statements and maintain  
12 accurate payroll records); 201, 202, 203 (by failing timely to pay all earned wages upon  
13 termination); 204 (by failing timely to pay all earned wages during employment); 222.5 (by  
14 failing to pay the costs of mandatory drug testing and/or physical examinations); 2802 (by  
15 failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of  
16 material terms of employment);

17           49.     For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,  
18 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code  
19 sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197,  
20 1197.1, 1198, 2802, and 2810.5;

21           50.     For attorneys' fees and costs pursuant to California Labor Code section  
22 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California  
23 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12,  
24 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

25           51.     For pre-judgment and post-judgment interest as provided by law; and

26           52.     For such other and further relief as the Court may deem equitable and appropriate

27                                   **As to the Ninth Cause of Action**

1           53.     That the Court declare, adjudge and decree that Defendants conduct of failing  
2 to provide Plaintiffs and class members all overtime wages due to them, failing to provide  
3 Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and  
4 class members all meal and rest periods, failing to provide Plaintiffs and class members  
5 accurate and complete wage statements, failing to maintain accurate payroll records for  
6 Plaintiffs and class members, failing timely to pay Plaintiffs and class members all earned  
7 wages during employment, failing to reimburse Plaintiffs and class members for the costs of  
8 mandatory pre-employment physicals and drug testing, failing to reimburse Plaintiffs and  
9 class members for business-related expenses, and failing to provide written notice of  
10 information material to employment, constitutes an unlawful business practice in violation of  
11 California Business and Professions Code sections 17200, *et seq.*;

12           54.     For restitution of unpaid wages to Plaintiffs and all class members and  
13 prejudgment interest from the day such amounts were due and payable;

14           55.     For the appointment of a receiver to receive, manage and distribute any and all  
15 funds disgorged from Defendants and determined to have been wrongfully acquired by  
16 Defendants as a result of violations of California Business & Professions Code sections 17200  
17 *et seq.*;

18           56.     For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
19 California Code of Civil Procedure section 1021.5; and

20           57.     For such other and further relief as the Court may deem equitable and  
21 appropriate.

22                           **As to the Tenth Cause of Action**

23           58.     That the Court declare, adjudge and decree that Defendants' conduct of denying  
24 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes  
25 an unfair business practice in violation of California Business and Professions Code sections  
26 17200, *et seq.*;

1           59.     For restitution of the statutory benefits under section 226.7 unfairly withheld  
2 from Plaintiffs and class members and prejudgment interest from the day such amounts were  
3 due and payable;

4           60.     For the appointment of a receiver to receive, manage and distribute any and all  
5 funds disgorged from Defendants and determined to have been wrongfully acquired by  
6 Defendants as a result of violations of California Business & Professions Code sections 17200  
7 *et seq.*;

8           61.     For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
9 California Code of Civil Procedure section 1021.5;

10          62.     For pre-judgment and post-judgment interest as provided by law; and

11          63.     For such other and further relief as the Court may deem equitable and  
12 appropriate.

13  
14 Dated: May 12, 2020

Respectfully submitted,

Capstone Law APC

15  
16  
17 By: \_\_\_\_\_

18 Mark A. Ozzello  
19 Brandon Brouillette  
20 Brooke W. Waldrop

21 Attorneys for Plaintiffs Belinda Payton and  
22 Charmaine Walker  
23  
24  
25  
26  
27  
28

# Exhibit 3

## FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With over twenty-five seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over a hundred million dollars in recovery for employees and consumers:

- In February, 2015, Capstone attorneys Raul Perez and Ryan H. Wu were honored with the *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshall's of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- Capstone has made important contributions to consumer protection law. In *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the right to seek public injunctive relief under the state's consumer protection laws cannot be waived and that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a denial of class certification, making law that clarified the use of "benefit of the bargain" damages models in consumer class actions.
- Capstone served as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour Fitness USA, Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code violations.
- Capstone has an established practice in automotive defect class actions and is currently appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, No. 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).

## SUMMARY OF SIGNIFICANT SETTLEMENTS

Since its founding, Capstone has settled over 100 high-stakes class and representative actions totaling well over \$200 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program for nearly 2 million consumers;
- *Moore v. PetSmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.

## PROFESSIONAL BIOGRAPHIES

### Partners

**Rebecca Labat.** Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

**Raul Perez.** Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4<sup>th</sup> 348 (2014), Mr. Perez, along with Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

**Melissa Grant.** Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on multiplied certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, standing, the nature of PAGA violations, the scope of discovery, and trials.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

**Ryan H. Wu.** Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshall's of CA LLC)*, 3 Cal.5th 531(2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*. Mr. Wu recently achieved an important consumer victory in *Nguyen v. Nissan N.A.*, 932 F.3d 811 (9th Cir. 2019), which clarified the use of "benefit of the bargain" damages models in consumer class actions.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Williams v. Superior Court: Employees' Perspective*" and "*Iskanian v. CLS Transportation: Employees' Perspective*," both published in the *California Labor & Employment Law Review*.

**Robert Drexler.** Robert Drexler is a partner with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims

such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2015.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored *Defective Prosthetic Devices: Strict Tort Liability for the Hospital?* 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal. Mr. Drexler was named a "Super Lawyer" in 2017.

**Jamie Greene.** Jamie Greene is a partner at Capstone where she evaluates potential new cases, develops new claims, and manages client relations. Well-versed in wage and hour law and federal and state consumer protection statutes, Ms. Greene supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation. Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. She is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California. She is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

### **Senior Counsel**

**Theresa Carroll.** Theresa Carroll is a senior counsel at Capstone Law. Her practice is devoted to the Appeals & Complex Motions team, working on various settlement and approval projects.

Prior to joining Capstone, Ms. Carroll was an associate with Parker Stanbury, LLP, advising small business owners on various employment matters and worked as an associate attorney for O'Donnell & Mandell litigating employment discrimination and sexual harassment cases. In 1995, she graduated from Southwestern University School of Law where she was on the trial advocacy team and was awarded the prestigious Trial Advocate of the Year award sponsored by the American Board of Trial Advocates (ABOTA) for Southwestern University School of Law. Ms. Carroll received her Bachelor of Science degree in speech with an emphasis in theatre from Iowa State University.

**Liana Carter.** Liana Carter is senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017 WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

**Molly DeSario.** Molly DeSario is a senior counsel with Capstone Law, specializing in employment class action litigation. Ms. DeSario's practice focuses primarily on wage-and-hour class action and Private Attorneys General Act litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work. She has experience briefing and arguing a multitude of dispositive motions in state and federal court and has successfully certified and settled numerous classes for claims such as exempt misclassifications, unpaid wages, missed meal and rest breaks, and unreimbursed business expenses.

Ms. DeSario began her career as a general practice litigation associate with Sandler & Mercer in Rockville, Maryland, handling a wide range of civil and criminal matters. Since 2005, she has primarily litigated class action cases and, for the last seven years, has focused on representing employees and consumers in class and collective actions across California and the nation, helping them recover millions of dollars in unpaid wages, restitution, and penalties. Molly graduated from Northeastern University School of Law in 2002. During law school, she interned for the U.S. Attorney's Office in Boston, Massachusetts, and the Honorable Paul L. Friedman at the U.S. District Court for the District of Columbia. She received her undergraduate degree in Marketing and International Business from the University of Cincinnati, where she graduated summa cum laude.

**Robert Friedl.** Robert Friedl is senior counsel at Capstone, where he devotes most of his time to the briefing and litigation strategy of consumer protection cases. Mr. Friedl has over 20 years of experience representing plaintiffs and defendants in consumer class actions, insurance coverage and defense, employment law, and personal injury. His lengthy service as an appellate attorney has yielded several published cases, including successful outcomes in *Goldstein v. Ralphs*, 122 Cal. App. 4th 229 (2004), *Morgan v. AT&T*, 177 Cal. App. 4th 1235 (2009), and *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450 (2012). At Capstone, Mr. Friedl was responsible for the appellate win in *Grant v. Unifund CCR, LLC*, 577 Fed. Appx. 693 (9th Cir. 2014).

Prior to joining Capstone, Mr. Friedl was a partner at civil litigation boutique, where he handled the firm's most complex briefing. He is a graduate of the University of Connecticut, and received his law degree from Southwestern School of Law, where he earned an American Jurisprudence Book Award.

**Mark A. Ozzello.** Mark A. Ozzello is a senior counsel with Capstone Law, where he leads the firm's consumer team. He is a nationally recognized and respected consumer and employment attorney who has litigated those issues throughout the country. He has always been at the forefront of consumer rights, sitting on the Board of Governors for the Consumer Attorneys of California and regularly appearing as a featured speaker on consumer rights issues nationwide.

Mr. Ozzello is a former partner of Arias Ozzello & Gignac and, most recently, was Of Counsel to Markun Zusman Freniere & Compton, LLP. In his capacity as a litigator, he has obtained results for his clients in excess of \$200 million dollars. Mark has also achieved consistent success in the California Courts of Appeal, and several judicial opinions regularly cite to his matters as authority for class certification issues. He has also argued appellate issues in several Circuit Courts of Appeals with great success. Mr. Ozzello attended

Pepperdine University School of Law where he was an Editor to the Law Review, publishing several articles during his tenure in that capacity. He received his undergraduate degree from Georgetown University.

Mr. Ozzello has always strived to be an integral part of local communities. He has established educational scholarship programs at several charitable organizations, including El Centro De Amistad in Los Angeles and St. Bonaventure Indian Mission and School in Thoreau, New Mexico, and presides over a legal clinic in Los Angeles which provides pro bono legal assistance to non-English speaking individuals.

**Bevin Allen Pike.** Bevin Allen Pike is a senior counsel with Capstone Law where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

**Eduardo Santos.** Eduardo Santos is a senior counsel at Capstone Law, concentrating his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over \$100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement.

**John Stobart.** John Stobart is a senior counsel with Capstone Law. He focuses on appellate issues in state and federal courts and contributes to the firm's amicus curiae efforts to protect and expand the legal rights of California employees and consumers. Mr. Stobart has significant appellate experience having drafted over two dozen writs, appeals and petitions, and having argued before the Second, Fourth, and Fifth Districts of the California Court of Appeal.

Prior to joining Capstone, Mr. Stobart was a law and motion attorney who defended against civil liability in catastrophic injury and wrongful death cases brought against his clients, which included the railroad, public schools, small businesses, and commercial and residential landowners. He has drafted and argued scores of dispositive motions at the trial court level and had success in upholding judgments and verdicts on appeal. He

graduated cum laude from Thomas Jefferson School of Law where he was on the mock trial competition team and earned his undergraduate degree from the Ohio State University.

**Orlando Villalba.** Orlando Villalba is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Mr. Villalba began his career at Kirkland & Ellis where he handled a wide range of business litigation matters, including transnational contract disputes, insurance-related tort claims, developer litigation, and civil rights actions. He also has extensive plaintiff-side experience representing government agencies and note-holders in the pursuit of mortgage and other fraud losses. Mr. Villalba graduated from Stanford Law School, where he served as an articles editor on the Stanford Journal of Law, Business & Finance. After law school, he clerked for the Honorable Warren Matthews of the Alaska Supreme Court. Orlando received his bachelor's degree in International Business from the University of Southern California.

**Steven Weinmann.** Steven Weinmann is a senior counsel with Capstone Law and leads the consumer rights team. His practice encompasses complex and class action litigation, including consumer product and services cases under California's Unfair Competition Law (UCL), data privacy breach cases, and a special emphasis on vehicle defect litigation. He has a background in securities litigation, antitrust, environmental law, and consumer class action cases.

Prior to joining Capstone, Steven's experience included litigating class actions on behalf of employees and consumers, in addition to representing individuals and small and large companies in various types of litigation, from business disputes to personal injury, financial fraud, construction defects, and products liability. Steven has been instrumental in achieving favorable results for numerous certified classes, including cases against Home Depot USA (for wage and hour and UCL claims); LegalZoom.com, Inc. (claims involving illegal practice of law); Wells Fargo Bank, N.A. (UCL, CLRA, federal Truth in Lending Act [TILA] claims). Steven briefed and help bring about numerous reported decisions including *Fraley v. Facebook*, 830 F.Supp.2d 785 (N.D. Cal. 2011) (defeating a motion to dismiss on claims involving the right to publicity); *Ceja v. Rudolph & Sletten*, 194 Cal.App.4th 584 (Sixth Appellate Div. 2011), affirmed, California Supreme Court, 56 Cal. 4th 1113 (2013) (confirming the test for determining putative spouse status is a subjective one). He also helped brief and obtained a decision favorable to plaintiffs in a seminal case under California's UCL, *McAdams v. Monier, Inc.*, 182 Cal.App.4th 174 (2010) (deciding only the named class representative needed to satisfy Proposition 64 standing requirements). He received his J.D. with distinction from the Hofstra University School of Law, where he was an associate editor on the Hofstra Law Review, and earned his undergraduate degree in English Literature and Political Science from Rutgers University.

**Tarek Zohdy.** A senior counsel with Capstone, Tarek Zohdy develops, investigates and litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class actions from investigation through settlements that have provided significant relief to millions of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as "Lemon Law." He also handled fraudulent misrepresentation and omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in 2003, and Boston

University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

### **Associates**

**Brandon Brouillette.** Brandon Brouillette is an associate with Capstone Law, where his practice focuses on representing employees and consumers in complex litigation, primarily wage-and-hour class actions and PAGA representative actions. Mr. Brouillette's entire legal career has been devoted to representing individual and class representative plaintiffs against large corporate entities. Prior to joining Capstone, he served as an associate at Boucher LLP where he managed the firm's wage-and-hour class actions. He earned his Juris Doctor from Loyola Law School, Los Angeles, where he spent a summer interning for the legal clearance and corporate legal departments at Warner Bros. He received his undergraduate degree from the University of Southern California, where he majored in Business Administration and spent a semester abroad in Budapest, Hungary. In 2016, Brandon was selected as one of Super Lawyers' "Rising Stars" in Southern California.

**Anthony Castillo.** Anthony Castillo is an associate with Capstone Law. His practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues. Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

**Joseph Hakakian.** Joseph Hakakian is an associate with Capstone Law. His practice focuses on prosecuting wage-and-hour class and representative actions in state and federal court. Prior to joining Capstone Law, Mr. Hakakian served as a summer clerk for Mark Ozzello at Markun Zusman Freniere & Compton, LLP, working on various actions including wage-and-hour claims, unpaid overtime, false advertising, and unfair competition. He graduated from UCLA School of Law, with a business law specialization, where he served as a staff editor for the Journal of Environmental Law and Policy and worked as a law clerk with the Consumer Protection Division of the Los Angeles District Attorney's Office. Prior to attending law school, Mr. Hakakian received his undergraduate degree from University of California, Los Angeles, in 2013, where he graduated summa cum laude, Dean's Honor List, and College Honors, and received scholastic achievement awards from Golden Key Honor Society and Phi Alpha Theta Honor Society. Joseph is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), Consumer Attorneys of California (CAOC), and Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

**Michelle Kennedy.** Michelle Kennedy is an associate with Capstone Law. Her practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. She began her career as a contract attorney in the Utah Attorney General's Civil Litigation Division handling torts, civil rights, and employment law matters. She later founded her own firm handling business and intellectual property matters, where she settled a copyright infringement suit. Prior to moving to Southern California, Ms. Kennedy was recognized by Super Lawyers as a Mountain States Rising Star in 2017 and 2018. She also served as President of the Utah Minority Bar Association and as an Ex-Officio Member of the Utah State Bar Commission. Michelle graduated from the University of Utah S.J. Quinney College of Law in 2013, where she served as President of the Art Law Alliance and Vice

President of the Minority Law Caucus. She earned her undergraduate degree from Brigham Young University in 2010, where she majored in Philosophy. Ms. Kennedy is an active member of the Consumer Attorneys Association of Los Angeles (CAALA) and the Los Angeles County Bar Association. Michelle is admitted to practice law in Utah and California.

**Jonathan Lee.** An associate with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California. Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

**Trisha Monesi.** Trisha Monesi is an associate with Capstone. Her practice focuses on prosecuting consumer class actions in state and federal court. Ms. Monesi graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations.

**Cody Padgett.** An associate with Capstone, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

**Mao Shiokura.** Mao Shiokura is an associate with Capstone. Her practice focuses on identifying, analyzing, and developing new wage-and-hour and consumer claims, including violations of the Fair Credit Reporting Act, Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships. Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

**Brooke Waldrop.** Brooke Waldrop is an associate with Capstone Law. Her practice focuses on the pre-litigation analysis of wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work. Ms. Waldrop graduated from University of Utah S.J. Quinney College of Law in 2008, where she was a member of Extra Muros, an international law journal and think tank. During law school, she volunteered and clerked for the Disability Law Center, International Rights Advocates in Washington, D.C., the Utah Crime Victims Legal Center, and the Utah Council for Victims of Crime. After law school, Brooke obtained an MFA at USC's School of Cinematic Arts Writing for Screen and Television



program where she was also awarded the prestigious Annenberg Fellowship. Before joining Capstone as an associate, she worked at Capstone as a contract attorney and settled a copyright infringement suit for a commercially-successful property. She earned her undergraduate degree from Westminster College of Salt Lake, majoring in Political Studies with an emphasis in Philosophy, and minoring in Theater, where she graduated summa cum laude.

#### **OUTREACH AND EDUCATION**

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal ([www.impactlitigation.com](http://www.impactlitigation.com)). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California's consumer and workplace protection laws.

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7 Attorneys for Plaintiffs Belinda Payton and Charmaine Walker

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN JOAQUIN

11 BELINDA PAYTON, individually, and on  
12 behalf of other members of the general public  
similarly situated,

13 Plaintiff,

14 vs.

15 PRIDE INDUSTRIES, a California corporation;  
16 and DOES 1 through 10, inclusive,

17 Defendants.  
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Case No.: STK-UOE-2017-7110

**[PROPOSED] ORDER GRANTING MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date(s): July 14, 2020  
July 15, 2020  
July 21, 2020

Time: 9:00 a.m.  
Place: Department 10-B

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7. The Court preliminarily approves the Settlement Agreement, including all the terms and conditions set forth therein and the Class Settlement Amount and allocation of payments.

8. The rights of any potential dissenters to the proposed Settlement are adequately protected in that they may exclude themselves from the Settlement and proceed with any alleged claims they may have against Defendant, or they may object to the Settlement and appear before this Court. However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of Class Action Settlement.

9. The Court approves, as to form and content, the proposed Notice of Class Action Settlement (“Notice Packet”).

10. The Court directs the mailing, by First-Class U.S. mail, of the Notice Packets to Class Members in accordance with the schedule set forth below and the other procedures described in the Settlement Agreement. The Court finds that the method selected for communicating the preliminary approval of the Settlement Agreement to Class Members is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to notice, and thereby satisfies due process.

11. The Court appoints Plaintiffs Belinda Payton and Charmaine Walker as the representatives for the Settlement Class conditionally certified by this Order.

12. The Court appoints Capstone Law APC as Class Counsel. The Court finds that counsel have demonstrable experience litigating, certifying, and settling class actions, and will serve as adequate counsel for the Class conditionally certified by this Order.

13. The Court approves and appoints CPT Group, Inc. as the Settlement Administrator.

14. The following dates shall govern for purposes of this Settlement:

| Date                                                                                                                              | Event                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| <b>TBD</b> (or not later than 20 calendar days after the Court grants preliminary approval of the Settlement Agreement, if later) | Last day for Defendant to produce the Class List to the Settlement Administrator.            |
| <b>TBD</b> (or not later than 10 calendar days after Defendant produces the Class List, if later)                                 | Last day for the Settlement Administrator to mail Notice Packets to all Class Members.       |
| <b>TBD</b> (or not later than 30 calendar days after the Settlement Administrator mails the Notice Packets, if later)             | Last day for Class Members to submit Requests for Exclusion or Objections to the Settlement. |

| Date | Event                                                                                                                                                                          |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| TBD  | Last day for Plaintiffs to file the Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payments. |
| TBD  | Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payments.                          |

15. The Court expressly reserves the right to continue or adjourn the final approval hearing without further notice to the Class Members.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Barbara Kronlund  
San Joaquin Superior Court