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

KUANETTA VICTORIA TODD, an
individual and on behalf of all others similarly
situated,

Plaintiff,

v.

MOTIVATE, LLC, a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CGC-23-605052
[Related with Case No. 4:20-cv-04865-YGR]
[Assigned to the Hon. Anne-Christine
Massullo in Dept. 610]

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

ACTION FILED: March 8, 2023
TRIAL DATE: None set

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1 This Joint Stipulation Re: Class Action and Representative Action Settlement
2 (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiffs
3 Kuanetta Victoria Todd (“Todd”) and Flouzel Paningbatan (“Paningbatan” and with Todd, the
4 “Plaintiffs”), individually and on behalf of the Settlement Class, as defined below, on one hand;
5 and defendant Motivate LLC (“Defendant”), on the other hand, in the lawsuits entitled *Kuanetta*
6 *Victoria Todd v. Motivate LLC*, filed in San Francisco County Superior Court, Case No. CGC-
7 23-605052 (“Class Action”) and Case No. CGC-23-606158 (“Todd PAGA Action”), and *Flouzel*
8 *Paningbatan v. Motivate LLC, et al.*, filed in Alameda County Superior Court, Case No.
9 RG20063616, which was removed to U.S. District Court, Northern District of California, Case
10 No. 4:20-cv-04865-YGR (collectively, the “Paningbatan PAGA Action”). Plaintiffs and
11 Defendant shall be, at times, collectively referred to as the “Parties.” This Agreement is intended
12 by the Parties to fully, finally, and forever resolve, discharge, and settle the claims as set forth
13 herein, based upon and subject to the terms and conditions of this Agreement.

14 **1. DEFINITIONS**

15 **A. “Action”** means the civil lawsuit entitled *Kuanetta Victoria Todd v. Motivate,*
16 *LLC*, filed in San Francisco County Superior Court, Case No. CGC-23-605052.

17 **B. “Aggrieved Employees”** means Class Members working for Defendant during
18 the PAGA Period as non-exempt, hourly-paid employees.

19 **C. “Class Counsel”** means David D. Bibiyan and Jeffrey D. Klein of Bibiyan Law
20 Group, P.C., and John A. Lofton of Aiman-Smith & Marcy, P.C. The term “Class Counsel” shall
21 be used synonymously with the term “Plaintiffs’ Counsel.”

22 **D. “Class Period”** means the period from March 8, 2019 through August 7, 2023.

23 **E. “Court”** means the Superior Court of the State of California for the County of
24 San Francisco.

25 **F. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
26 granting final approval of this Settlement (“Final Approval”) and Judgment, if no objection has
27 been made; (2) if there is an objector, 60 days from the date the Final Approval and Judgment;
28 or (3) to the extent any post-judgment motion or appeals have been filed, the date on which they

1 have been resolved or exhausted, and the final judgment is no longer appealable and constitutes
2 a “final judgment” for purposes of res judicata.

3 **G. “Defendant”** means Motivate LLC.

4 **H. “Employer Taxes”** means employer’s share of payroll taxes and contributions
5 imposed on the wage portions of the Individual Settlement Payments under the Federal Insurance
6 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
7 and contributions required of employers, such as for unemployment insurance.

8 **I. “General Release”** means the broader release of claims by Plaintiffs, which is in
9 addition to their limited release of claims as Participating Class Members.

10 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
11 Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00),¹ which shall be paid
12 by Defendant, and from which all payments for the Individual Settlement Payments to
13 Participating Class Members, Individual PAGA Payments to Aggrieved Employees and the
14 Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses
15 to Class Counsel, Settlement Administration Costs, Service Awards to Plaintiffs, and the LWDA
16 Payment for resolution of Plaintiffs’ cause of action for civil penalties under the Labor Code
17 Private Attorneys’ General Act, codified at Labor Code Section 2698, *et seq.* (“PAGA”), interest
18 and certain taxes shall be paid. It expressly excludes Employer Taxes, which shall be paid by
19 Defendant separate and apart from the Gross Settlement Amount.

20 **K. “Individual PAGA Payment”** means a payment made to each Aggrieved
21 Employee of his or her share of the PAGA Payment, which may be in addition to his or her
22 Individual Settlement Share.

23 **L. “Individual Settlement Payment”** means a payment to each Participating Class
24 Member of his or her net share of the Net Settlement Amount, excluding any PAGA Payment to
25 which he or she may be entitled if he or she is also an Aggrieved Employee.

26 **M. “Individual Settlement Share”** means the gross amount of the Net Settlement
27 Amount that each Participating Class Member is projected to receive based on the number of
28

¹ Subject to the escalator clause in Paragraph 17, below.

1 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
2 shall be reflected in his or her Class Notice.

3 **N. “LWDA Payment”** means the payment to the State of California Labor and
4 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
5 amount allocated toward penalties under the PAGA, all of which is to be paid from the Gross
6 Settlement Amount. The Parties have agreed that Two Hundred Thousand Dollars and Zero Cents
7 (\$200,000.00) shall be allocated toward PAGA penalties, of which One Hundred Fifty Thousand
8 Dollars and Zero Cents (\$150,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and
9 Fifty Thousand Dollars and Zero Cents (\$50,000.00) will be paid to Aggrieved Employees on a
10 *pro rata* basis based on the Workweeks worked in the PAGA Period, as further set out herein.

11 **O. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
12 that is available for distribution to Participating Class Members after deductions for the Court-
13 approved allocations for Settlement Administration Costs, Service Awards to Plaintiffs, an award
14 of attorneys’ fees to Class Counsel, reimbursement of litigation costs and expenses to Class
15 Counsel, the LWDA Payment, and the PAGA Payment.

16 **P. “PAGA Payment”** is the 25% portion of the Two Hundred Thousand Dollars and
17 Zero Cents (\$200,000.00) that is allocated toward PAGA penalties (Fifty Thousand Dollars and
18 Zero Cents (\$50,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on
19 the respective number of Workweeks each worked as non-exempt, hourly-paid employees in
20 California in the PAGA Period, which would be in addition to their Individual Settlement
21 Payment if they are Participating Class Members, as well.

22 **Q. “PAGA Period”** means the period from April 5, 2019 through August 7, 2023.

23 **S. “Participating Class Members”** means all Settlement Class Members who do
24 not submit a timely and valid Request for Exclusion.

25 **T. “Participating Individual Settlement Share”** means the gross amount of the Net
26 Settlement Amount that each Participating Class Member is eligible to receive based on the
27 number of Workweeks that he or she worked as a Settlement Class Member during the Class
28 Period once all opt-outs have been factored in, excluding any Individual PAGA Payment to

1 which he or she may be entitled if he or she is also an Aggrieved Employee.

2 **U. “Parties”** shall refer to Plaintiffs and Defendant collectively.

3 **V. “Plaintiffs”** or **“Named Plaintiffs”** shall refer to Kuanetta Victoria Todd and
4 Flouzel Paningbatan. **“Class Representative”** shall refer to Kuanetta Victoria Todd.

5 **W. “Preliminary Approval Date”** means the date on which the Court enters an Order
6 granting preliminary approval of the Settlement.

7 **X. “Released Parties”** shall mean Defendant and each of its past, present, and future
8 subsidiaries, dba’s, affiliates, parents, joint venturers, insurers and reinsurers, and company-
9 sponsored employee benefit plans of any nature, and their successors and predecessors in interest,
10 including all of their respective officers, directors, shareholders, employees, agents, principals,
11 heirs, representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,
12 trustees and agents.

13 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
14 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
15 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
16 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
17 such an instance, the Class Member shall have fifteen (15) days from the re-mailing, or forty-
18 five (45) days from the date of the initial mailing, whichever is later, in which to postmark a
19 Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the
20 exclusive means for determining whether a Request for Exclusion, Objection or Workweek
21 Dispute was submitted by the Response Deadline.

22 **Z. “Request for Exclusion”** means a written request to be excluded from the
23 Settlement Class pursuant to Section 9.C below.

24 **AA. “Service Awards”** means monetary amounts to be paid to Plaintiff Paningbatan
25 of up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) and to Plaintiff Todd of up to
26 Ten Thousand Dollars and Zero Cents (\$10,000.00), for a total of Twenty-Five Thousand Dollars
27 and Zero Cents (\$25,000.00) to Plaintiffs, which, subject to Court approval, will be paid out of
28 the Gross Settlement Amount.

1 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
2 Administrator in administration of the Settlement, including, but not limited to, translating the
3 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
4 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, and
5 Individual PAGA Payments, as well as associated taxes and withholdings, providing
6 declarations, generating Individual Settlement Payment checks and related tax reporting forms,
7 generating Individual PAGA Payment checks to Aggrieved Employees, doing administrative
8 work related to unclaimed checks, transmitting payment to Class Counsel for the Court-approved
9 amounts for attorneys’ fees and reimbursement of litigation costs and expenses, to Plaintiffs for
10 their Service Awards, and to the LWDA for the LWDA Payment, providing weekly reports of
11 opt-outs, objections and related information, and any other actions of the Settlement
12 Administrator as set forth in this Agreement, all pursuant to the terms of this Agreement. The
13 Settlement Administration Costs are estimated not to exceed \$25,000. If the actual amount of the
14 Settlement Administration Costs is less than \$25,000, the difference between \$25,000 and the
15 actual Settlement Administration Costs shall become a part of the Net Settlement Amount. If the
16 Settlement Administration Costs exceeds \$25,000, then such excess will be paid solely from the
17 Gross Settlement Amount and Defendant will not be responsible for paying any additional funds
18 in order to pay these additional costs.

19 **CC. “Settlement Administrator”** means the Third-Party Administrator, Atticus
20 Administration, mutually agreed upon by the Parties that will be responsible for the
21 administration of the Settlement including, without limitation, translating the Class Notice in
22 Spanish, the distribution of the Individual Settlement Payments and Individual PAGA Payments
23 to be made from the Gross Settlement Amount and related matters under this Agreement.

24 **DD. “Settlement Class,” “Settlement Class Members” or “Class Members”** means
25 all current and former non-exempt employees who worked for Defendant in California, whether
26 directly employed by Defendant or placed there by the staffing agency BlueCrew, Inc., at any
27 time during the Class Period.
28

1 **EE.** “**Workweeks**” means the number of workweeks that a Settlement Class Member
2 was employed by Defendant in California in a non-exempt, hourly-paid position during the Class
3 Period, based on hire date, re-hire dates (if applicable), and termination dates (if applicable).

4 **2. BACKGROUND**

5 **A.** On February 27, 2020, plaintiff Paningbatan filed with the LWDA and served on
6 Defendant a notice under Labor Code section 2699.3, stating plaintiff Paningbatan sought to
7 serve as a proxy of the LWDA to seek to recover civil penalties, on behalf of Aggrieved
8 Employees, for alleged Labor Code violations (“Paningbatan PAGA Notice”).

9 **B.** Meanwhile, in or about June of 2020, plaintiff Paningbatan filed a representative
10 action in Alameda County Superior Court, Case No. RG20063616, seeking PAGA civil penalties
11 against Defendant and BlueCrew, Inc., (“BlueCrew”) for alleged Labor Code violations alleged
12 in her PAGA Notice. On Defendant’s motion, the case was removed to the Northern District
13 Court, Case No. 4:20-cv-04865-YGR (the “Paningbatan PAGA Action”) on July 20, 2020.

14 **C.** In or around November of 2021, separate PAGA actions alleging overlapping
15 claims involving BlueCrew employees (including those who worked at Motivate) and BlueCrew
16 as defendant, styled *Alvarado v. Lyft, BlueCrew, Inc., et al.*, in Los Angeles Superior Court, Case
17 No. 19STCV31621, and *Cho v. BlueCrew, Inc.*, in Los Angeles Superior Court, Case No.
18 19STCV38519), were settled. Hence, plaintiff Paningbatan agreed to dismiss her PAGA claims
19 on behalf of BlueCrew employees who worked at Motivate, as to BlueCrew.

20 **D.** On February 21, 2023, plaintiff Todd filed with the LWDA and served on
21 Defendant a notice under Labor Code section 2699.3, stating plaintiff Todd sought to serve as a
22 proxy of the LWDA to seek to recover civil penalties, on behalf of Aggrieved Employees, for
23 alleged Labor Code violations (“Todd PAGA Notice” and with the Paningbatan PAGA Notice,
24 the “PAGA Notices”).

25 **E.** On March 8, 2023, plaintiff Todd filed a putative wage-and-hour class action
26 alleging that, during the Class Period, Defendant, as it pertains to Class Members: (1) failed to
27 pay overtime wages; (2) failed to pay minimum wages; (3) failed to pay all wages due upon
28 termination or resignation; (4) failed to provide accurate and itemized wage statements; (5) failed

1 to timely pay wages during employment; (6) failed to indemnify for business expenses (8) failed
2 to pay unused paid vacation time; and (9) engaged in unfair competition (the “Class Action”).

3 **F.** On April 27, 2023, after sixty-five (65) days had passed since plaintiff Todd filed
4 and served the Todd PAGA Notice, without any action by the LWDA with respect to the alleged
5 Labor Code violations, plaintiff Todd filed a separate representative action, Case No. CGC-23-
6 606158, seeking PAGA civil penalties against Defendant for Labor Code violations alleged in
7 the PAGA Notice (the “Todd PAGA Action”).

8 **G.** Thereafter, the Parties exchanged formal and informal discovery, and agreed to
9 attend mediation, in which Plaintiffs were provided with, among other things: (1) time and
10 payroll records for putative class Members, including audit logs thereof; (2) putative class
11 members’ data points, including the number of Pay Periods and Workweeks worked by putative
12 class members during the Class Period and PAGA Period, and the number of employees and
13 terminated employees during the Class Period and PAGA Period; (3) policy documents of
14 Defendant; and (4) personnel records of Plaintiffs. The parties also engaged in three separate
15 *Belaire-West* notice processes and Paningbatan’s counsel obtained names and contact
16 information for the putative class Members.

17 **H.** On May 17, 2023, the Parties attended a full-day mediation before Jeff Ross
18 Esquire, a well-regarded mediator experienced in mediating complex labor and employment
19 matters. With the aid of the mediator’s evaluation, the Parties reached the Settlement, shortly
20 after the mediation, to resolve the Action and all claims asserted in the Class Action, Paningbatan
21 PAGA Action, Todd PAGA Action, and PAGA Notices.

22 **I.** As part of the Settlement, Plaintiffs agreed to consolidate the Todd PAGA Action
23 and the Paningbatan PAGA Action into this Action (hereafter referred to as the “Action,”
24 “Litigation” or “Lawsuit”). To that end, the Parties agreed to plaintiff Todd’s filing of a First
25 Amended Complaint in the Action to add plaintiff Paningbatan as a named plaintiff, all
26 allegations pled in the Todd PAGA Action and in the Paningbatan PAGA Action for PAGA civil
27 penalties (the “Operative Complaint”). See FAC attached as **Exhibit A**. Upon final approval of
28

1 this Settlement, Plaintiffs agree to immediately file requests to dismiss, with prejudice, their
2 respective PAGA actions, effectively consolidating their PAGA actions into this Action.

3 **J.** Class Counsel have conducted significant investigation of the law and facts
4 relating to the claims asserted in the Action and PAGA Notices, have spoken to many putative
5 class Members, and have concluded that the Settlement set forth herein is fair, reasonable,
6 adequate and in the best interests of the Settlement Class, taking into account the sharply
7 contested issues involved, the expense and time necessary to litigate the Action through trial and
8 any appeals, the risks and costs of further litigation of the Action, the risk of an adverse outcome,
9 the uncertainties of complex litigation, the information learned through informal discovery
10 regarding Plaintiffs' allegations, and the substantial benefits to be received by the Settlement
11 Class Members.

12 **K.** Defendant has concluded that, because of the substantial expense of defending
13 against the Action, the length of time necessary to resolve the issues presented herein, the
14 inconvenience involved, and the concomitant disruption to their business operations, it is in its
15 best interest to accept the terms of this Agreement. Defendant denies that it has violated any
16 applicable laws and denies each of the allegations and claims asserted against them in the
17 Paningbatan PAGA Action, the Class Action, the Todd PAGA Action, the Action, and the PAGA
18 Notices. Defendant also denies that class certification or representative treatment of any of
19 Plaintiffs' claims would be proper. However, Defendant nevertheless desires to settle the Action
20 for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation and for
21 the purpose of putting to rest the controversies engendered by the Action. The terms of the
22 settlement as memorialized in this Agreement were negotiated in light of all known facts and
23 circumstances—including the difficulty of proving Plaintiffs' claims, potential defenses asserted
24 by Defendant, the uncertainty associated with litigation, the risks of significant delay, and
25 numerous potential appellate issues—and were reached after extensive arm's-length
26 negotiations, with the continued assistance of the mediator.

27 **L.** This Agreement is intended to and does effectuate the full, final and complete
28 resolution of all Class Released Claims of Plaintiffs and Participating Class Members, and all

1 PAGA Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California
2 and Aggrieved Employees.

3 **3. JURISDICTION**

4 The Court has jurisdiction over the Parties and the subject matter of the Action. The
5 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
6 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
7 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
8 pursuant to California Rule of Court, rule 3.769, subdivision (h).

9 **4. STIPULATION OF CLASS CERTIFICATION**

10 The Parties stipulate to the certification of the Settlement Class under this Agreement for
11 purposes of settlement only. For purposes of settling this Action only, the Parties conditionally
12 have agreed that the requirements for establishing class certification have been met with respect
13 to the Settlement Class. If the Court does not grant either preliminary or final approval of the
14 settlement, the fact that the Parties were willing to stipulate to class certification for the
15 Settlement Class for the purposes of this Agreement shall not have any bearing on, or be
16 admissible in connection with, the issue of whether any class should be certified in a non-
17 settlement context. Defendant does not waive, and instead expressly reserves, any and all rights
18 to challenge the propriety of class certification or representative treatment for any other purpose
19 should the Court not approve this Agreement or issue a Final Approval Order.

20 **5. AMENDMENT OF PLEADING AND MOTIONS FOR APPROVAL**
21 **OF SETTLEMENT**

22 The Parties hereby stipulate to the filing of a First Amended Complaint in the
23 Action that includes all of the allegations from the Todd PAGA Action and the Paningbatan
24 PAGA Action. See Exhibit A. Upon final approval of this Settlement, Plaintiffs will dismiss the
25 Todd PAGA Action with prejudice, and the Paningbatan PAGA Action with prejudice, thereby
26 effectively consolidating all of Plaintiffs' allegations against Defendant into this Action.

27 After full execution of this Agreement, Plaintiffs will move for an order granting
28 preliminary approval of the Settlement, approving, and directing the mailing of the proposed

1 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “B,”** conditionally
2 certifying the Settlement Class for settlement purposes only, and approving the deadlines
3 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes and
4 Objections. If and when the Court preliminarily approves the Settlement, and after administration
5 of the Class Notice in a manner consistent with the Court’s Preliminary Approval Order,
6 Plaintiffs will move for an order finally approving the Settlement and seek entry of a Judgment
7 in line with this Settlement. The Parties may both respond to any Objections lodged to final
8 approval of the Settlement up to five (5) court days before the Final Approval Hearing.

9 The Parties agree to refrain from further litigation of the Paningbatan PAGA Action, the
10 Todd PAGA Action, and this Action, except such proceedings necessary to implement and obtain
11 the Final Approval Order. This settlement is conditioned upon the releases described herein, and
12 upon covenants by Settlement Class Members that they will not participate (unless legally
13 obligated) in any actions, lawsuits, proceedings, complaints, or charges brought individually or
14 by any other agency, persons, or entity in any court or before any administrative body related to
15 the Class Released Claims or PAGA Released Claims, nor will Settlement Class Members
16 contest or interfere with efforts by Defendant or a Released Party to oppose any attempt to bring
17 such released claims against Defendant or a Released Party, provided however, that any such
18 participation, contestation, or interference by a Class Member shall not effect the validity of this
19 settlement, and any remedies available to Defendant shall be limited to the offending Class
20 Member.

21 The Parties hereby expressly agree that whether or not the Court finally approves the
22 Settlement, Plaintiffs’ allegations from the Todd PAGA Action and the Paningbatan PAGA
23 Action will be effectively consolidated into the Action, and will relate back to the date on which
24 Plaintiffs filed their respective PAGA notices, and Defendants will be estopped from making any
25 argument that there is any adverse effect on the statute of limitations or any other potential
26 defense caused by or related to the transfer and consolidation of the Todd PAGA Action and the
27 Paningbatan PAGA Action into the Action.

28 **6. STATEMENT OF NO ADMISSION**

Defendant denies any wrongdoing of any sort and further denies any liability to Plaintiffs and the Settlement Class with respect to any claims or allegations asserted in the Action and the PAGA Notices. This Agreement shall not be deemed an admission by Defendant of any claims or allegations asserted in any of the Actions or the PAGA Notices. Except as set forth elsewhere herein, in the event that this Agreement is not approved by the Court, or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiffs will not be deemed to have waived, limited or affected in any way any claims, rights or remedies in the Actions or the PAGA Notices, and Defendant will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Actions or the PAGA Notices, and the Parties shall be restored to their respective positions in the Actions prior to the execution of this Settlement, with the exception of the consolidation of the cases as set forth in Paragraph 5.

7. RELEASE OF CLAIMS

A. Class Member Acknowledgment

Class Members acknowledge that they may hereafter discover facts or law different from, or in addition to, the facts or law they know or believe to exist with respect to a released claim. Settlement Class Members nonetheless acknowledge that this Agreement and its releases shall be and shall remain effective in all respects notwithstanding such different or additional facts or law regarding such released claims. This Agreement is conditioned upon covenants by Settlement Class Members that they will not participate in any proceeding involving the released claims set forth below and that Defendant shall not owe any further monies to Settlement Class Members or to the State of California based upon the released claims set forth below.

B. Class Release by Participating Class Members

Upon the entry of an Order granting Final Approval of the Settlement, Plaintiffs and all Participating Class Members release Defendant and the Released Parties from all claims asserted in the Operative Complaint, and all claims that could have been asserted against Defendant or the Released Parties based on the factual allegations in the Operative Complaint. For the duration of the Class Period, the release includes all claims for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to pay all wages due upon termination or resignation;

(4) failure to provide accurate and itemized wage statements; (5) failure to timely pay wages during employment; (6) failure to indemnify for work-related business expenses; (7) failure to pay unused paid vacation time; (8) failure to keep accurate time records, payroll records, or sick leave records; (9) failure to pay employees sick leave or the proper amount of sick leave, or failure to pay sick leave at the proper rate; (10) failure to provide meal or rest breaks; (11) failure to pay meal or rest break premiums or failure to pay meal or rest break premiums at the proper rate; (12) failure to provide compliant Wage Theft Notices; and (13) unfair competition under California Business & Professions Code section 17200, *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint (the “Class Released Claims”).

Upon final approval of the Settlement, all Settlement Class Members who have not submitted a timely and valid Request for Exclusion shall be deemed to have, and by operation of final judgment shall have, fully, finally, and forever settled and released any and all of the Class Released Claims, which now exist, or heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts. These releases do not include any claims that cannot be waived as a matter of law, though Settlement Class Members acknowledge and agree that they will not accept any monetary recovery from any proceedings relating to any such claims.

C. PAGA Release by Aggrieved Employees

Upon entry of an Order granting final approval of the Settlement, all Aggrieved Employees shall release Defendant and the Released Parties,, for the duration of the PAGA Period, from all PAGA claims asserted in the Paningbatan and Todd PAGA Notices and Operative Complaint, and all claims that could have been asserted based on the factual allegations in the PAGA Notices and the Operative Complaint, including, pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and 2699, alleged violations of Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others (the “PAGA Released Claims”). The Class Released Claims and PAGA Released Claims shall be referred to herein as the “Released Claims.”

1 Upon the Court's entry of the Final Approval Order, Plaintiffs, the State of California
2 with respect to the Aggrieved Employees, and all Aggrieved Employees, will be deemed to
3 fully, finally, and forever release Defendant and the Released Parties from any and all released
4 PAGA Released Claims. The Parties acknowledge and agree that collateral estoppel separately
5 bars Aggrieved Employees from any proceedings relating to any such PAGA claims.

6 **D. Claims Not Released**

7 The releases above expressly exclude all claims for vested benefits, wrongful termination,
8 unemployment insurance, disability, social security, workers' compensation, and any other
9 claims arising outside of the Class Period.

10 **E. General Release by Plaintiffs**

11 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
12 of Judgment and payment by Defendant to the Settlement Administrator selected of the full Gross
13 Settlement Amount and Employer Taxes necessary to effectuate the Settlement, in addition to
14 the above release of the Released Claims, Plaintiffs make the additional following General
15 Release: Plaintiffs release the Released Parties from all claims, demands, rights, liabilities and
16 causes of action of every nature and description whatsoever, known or unknown, asserted or that
17 might have been asserted, whether in tort, contract, or for violation of any state or federal statute,
18 rule, law or regulation arising out of, relating to or in connection with any act or omission of the
19 Released Parties through the date of full execution of this Agreement in connection with
20 Plaintiffs' employment with Defendant or termination thereof, except for any and all other claims
21 that may not be released as a matter of law through this Agreement. To the extent of the General
22 Release provided herein, Plaintiffs stipulate and agree that, upon entry of an Order granting Final
23 Approval of the Settlement, entry of Judgment and payment by Defendant to the Settlement
24 Administrator selected of the full Gross Settlement Amount and Employer Taxes necessary to
25 effectuate the Settlement, they shall have expressly waived and relinquished, to the fullest extent
26 permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code,
27 or any other similar provision under federal or state law, which provides:

28 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

1 favor at the time of executing the release and that, if known by
2 him or her, would have materially affected his or her settlement
3 with the debtor or released party.

4 Plaintiffs acknowledge that they have read the entirety of this Agreement, including the above
5 language from Civil Code section 1542, and that they fully understand both. By executing this
6 Agreement, Plaintiffs expressly waive any benefits and rights granted pursuant to Civil Code
7 section 1542 or any statute, rule, or principle of common law or equity, in any jurisdiction, that
8 is similar, comparable, or equivalent, in whole or in part, to Civil Code section 1542. Plaintiffs
9 acknowledge and agree that this knowing and voluntary waiver is an essential and material term
10 of this Agreement, and this Agreement would not have been entered into without such a waiver.

11 **8. SETTLEMENT ADMINISTRATOR**

12 **A.** Plaintiffs and Defendant, through their respective counsel, have selected Atticus
13 Administration to administer the Settlement, which includes, but is not limited to, distributing
14 and responding to inquiries about the Class Notice and calculating all amounts to be paid from
15 the Gross Settlement Amount. Plaintiffs shall request that the Court approve Atticus
16 Administration as the settlement administrator. Charges and expenses of the Settlement
17 Administrator, currently estimated to be \$25,000, will be paid from the Gross Settlement
18 Amount. If the actual amount of the Settlement Administration Costs is less than \$25,000, the
19 difference between \$25,000, and the actual Settlement Administration Costs shall become a part
20 of the Net Settlement Amount. If the Settlement Administration Costs exceed \$25,000, then such
21 excess will be paid solely from the Gross Settlement Amount and Defendant will not be
22 responsible for paying any additional funds in order to pay these additional costs.

23 All disputes relating to the Settlement Administrator's performance of its duties, after
24 good-faith efforts by the Parties to first resolve such disputes, will be referred to the Court, if
25 necessary, which will have continuing jurisdiction over this Agreement until all payments and
26 obligations contemplated by this Agreement have been fully completed to Class Counsel and
27 Defendant's Counsel's satisfaction. Except as otherwise provided herein, if the Court does not
28 enter a Final Approval Order, Class Counsel and Defendant shall each pay one-half of any
Settlement Administration Costs incurred.

1 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION AND EXCLUSION**
2 **PROCESS**

3 **A. Notice to the Settlement Class Members**

4 (1) Within fourteen (14) calendar days after the Preliminary Approval Date,
5 Defendant's Counsel shall provide the Settlement Administrator with information with respect
6 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
7 currently in Defendant's possession, custody or control; (3) last known telephone number(s)
8 currently in Defendant's possession, custody or control; (4) last known Social Security
9 Number(s) in Defendant's possession, custody or control; and (5) the dates of employment (*i.e.*,
10 hire dates and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class
11 Member ("Class List"). The Settlement Administrator shall keep data provided by Defendant
12 strictly confidential, shall not share it with Class Counsel, shall use it only for the purposes
13 described herein, and shall return it to Defendant or confirm its destruction upon completion of
14 the Settlement Administrator's duties in administering the settlement.

15 (2) The Settlement Administrator shall perform an address search using the
16 United States Postal Service National Change of Address ("NCOA") database and update the
17 addresses contained on the Class List with the newly-found addresses, if any. Within seven (7)
18 calendar days or soon thereafter of receiving the Class List from Defendant, the Settlement
19 Administrator shall mail the Class Notice to the Settlement Class Members via first-class regular
20 U.S. Mail using the most current mailing address information available. The Settlement
21 Administrator shall maintain the Class List and digital copies of all the Settlement
22 Administrator's records evidencing the giving of notice to any Settlement Class Member for at
23 least four (4) years from the Final Approval Date.

24 (3) The Class Notice will set forth:

- 25 (a) the Settlement Class Member's estimated Individual
26 Settlement Payment and Individual PAGA Payment, and
27 the basis for each;
28

- 1 (b) the information required by California Rule of Court, rule
- 2 3.766, subdivision (d);
- 3 (c) the material terms of the Settlement;
- 4 (d) the proposed Settlement Administration Costs;
- 5 (e) the definition of the Settlement Class;
- 6 (f) a statement that the Court has preliminarily approved the
- 7 Settlement;
- 8 (g) how the Settlement Class Member can obtain additional
- 9 information, including contact information for Class
- 10 Counsel;
- 11 (h) information regarding opt-out and objection procedures;
- 12 (i) the date and location of the Final Approval Hearing; and
- 13 (j) that the Settlement Class Member must notify the
- 14 Settlement Administrator no later than the Response
- 15 Deadline if the Settlement Class Member disputes the
- 16 accuracy of the number of Workweeks as set forth on his or
- 17 her Class Notice (“Workweek Dispute”). If a Settlement
- 18 Class Member fails to timely dispute the number of
- 19 Workweeks attributed to him or her in conformity with the
- 20 instructions in the Class Notice, then he or she shall be
- 21 deemed to have waived any objection to its accuracy and
- 22 any claim to any additional settlement payment based on
- 23 different data.

24 (4) If a Class Notice from the initial notice mailing is returned as
25 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
26 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
27 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
28 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator

1 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
2 Member within three (3) business days. Further, any Class Notices that are returned to the
3 Settlement Administrator with a forwarding address before the Response Deadline shall be
4 promptly re-mailed to the forwarding address affixed thereto.

5 (5) No later than seven (7) calendar days from the Response Deadline, the
6 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
7 completion of the notice process, including the number of attempts to obtain valid mailing
8 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
9 and copies of all Requests for Exclusion and objections/comments received by the Settlement
10 Administrator.

11 **B. Objections to Settlement**

12 Class Members must comply with the procedures set forth in the Settlement Notice to opt
13 out of or object to the class action settlement. Only Participating Class Members may object to
14 the Settlement. In order for any Settlement Class Member to object to this Settlement in writing,
15 or any term of it, he or she must do so by mailing a written objection to the Settlement
16 Administrator at the address or phone number provided on the Class Notice no later than the
17 Response Deadline. The Settlement Administrator shall email a copy of the Objection forthwith
18 to Class Counsel and Defendant's counsel and attach copies of all Objections to the Declaration
19 it provides Class Counsel, which Class Counsel shall file in support of Plaintiffs' Motion for
20 Final Approval. The Objection should set forth in writing: (1) the Objector's name; (2) the
21 Objector's address; (3) the last four digits of the Objector's Social Security Number; (4) the
22 Objector's signature; (5) a statement of whether the Objector plans to appear at the Final
23 Approval Hearing; and (6) the reason(s) for the Objection, along with whatever legal authority,
24 if any, the Objector asserts in support of the Objection. Any Objection that does not contain all
25 required information shall be deemed null, void, and ineffective. If a Settlement Class Member
26 objects to the Settlement, the Settlement Class Member will remain a member of the Settlement
27 Class and if the Court approves this Agreement, the Settlement Class Member will be bound by
28 the terms of the Settlement and the releases in this Agreement in the same way and to the same

1 extent as a Settlement Class Member who does not object. The date of mailing of the Class Notice
2 to the objecting Settlement Class Member shall be conclusively determined according to the
3 records of the Settlement Administrator. Settlement Class Members need not object in writing to
4 be heard at the Final Approval Hearing; they may object or comment in person at the hearing at
5 their own expense. Class Members may withdraw their objections at any time. Class Counsel and
6 Defendant's Counsel may respond to any objection lodged with the Court up to five (5) court
7 days before the Final Approval Hearing.

8 **C. Requesting Exclusion from Settlement**

9 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
10 Settlement by mailing a written request to be excluded from the Settlement ("Request for
11 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
12 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last
13 four (4) digits of the Class Member's Social Security Number; (3) the Class Member's signature;
14 and (4) any statement standing for the proposition that the Class Member does not wish to
15 participate in the Settlement or the following statement: "Please exclude me from the Settlement
16 Class in the *Todd v. Motivate LLC*, matter." Any Request for Exclusion that does not include all
17 required information shall be deemed null, void, and ineffective. The Settlement Administrator
18 shall immediately provide copies of all Requests for Exclusion to Class Counsel and Defendant's
19 Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its
20 declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class
21 Member who requests exclusion using this procedure will not be entitled to receive any payment
22 from the Settlement and will not be bound by the Settlement Agreement or have any right to
23 object to, appeal or comment on the Settlement. Any Settlement Class Member who does not opt
24 out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by
25 all terms of the Settlement, including those pertaining to the Released Claims, as well as any
26 Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A
27 Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a
28 Settlement Class Member submits an Objection and a Request for Exclusion, the Request for

1 Exclusion will control and the Objection will be overruled. Settlement Class Members who
2 worked during the PAGA Period as Aggrieved Employees that submit a valid Request for
3 Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA
4 Payments, and will still be bound by the release of the PAGA Released Claims, because
5 Aggrieved Employees cannot “opt out” of the settlement of Plaintiffs’ PAGA claims.

6 **D. Disputes Regarding Settlement Class Members’ Workweek Data**

7 Each Settlement Class Member may dispute the number of Workweeks attributed to him
8 or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to
9 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
10 Response Deadline. Any such challenge/dispute shall include the reasons supporting the
11 challenge, as well as any documentation supporting his or her contention that the Individual
12 Settlement Payment or PAGA Payment calculation is incorrect. The Settlement Administrator
13 shall immediately provide copies of all disputes to Class Counsel and counsel for Defendant, and
14 shall immediately attempt to resolve all such disputes directly with relevant Settlement Class
15 Member(s) with the assistance of Defendant and Class Counsel. Defendant’s employment
16 records shall be presumed to be accurate and correct, and shall be final and binding, unless the
17 information submitted by the Settlement Class Member proves otherwise. If the dispute cannot
18 be resolved in this manner, the Court shall adjudicate the dispute.

19 **E. Defendant’s Right to Withdraw**

20 Defendant shall have the right, at its sole option, to withdraw from and nullify this
21 Agreement within 15 business days after the Response Deadline, if more than 5% or more of the
22 Class Members opt out. If Defendant exercises the right to withdraw from this Agreement, then
23 Defendant shall pay the Settlement Administrator’s expenses up to the date this Agreement is
24 nullified.

25 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
26 **PAGA PAYMENTS TO PARTICIPATING CLASS MEMBERS**

27 Individual Settlement Payments will be calculated and distributed to Participating Class
28 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class

Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

A. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period ("PAGA Workweeks").

B. To determine each Settlement Class Member's Individual Settlement Share, the Settlement Administrator will use the following formula: Individual Settlement Share = (Settlement Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

C. To determine each Participating Class Member's Participating Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Workweeks worked by all Participating Class Members during the Class Period ("Participating Class Workweeks") and use the following formula: Individual Settlement Share = (Participating Class Member's Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

D. The net amount of the Participating Individual Settlement Share is to be paid out to Participating Class Members by way of check and is referred to as "Individual Settlement Payment(s)".

E. To determine each Aggrieved Employee's Individual PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee's Individual

PAGA Payment = ([Aggrieved Employee's Workweeks ÷ PAGA Workweeks] x \$50,000.00 (the "PAGA Payment")).

F. Individual Settlement Payments and Individual PAGA Payments shall be paid to Participating Class Members and/or Aggrieved Employees by way of check. When a Participating Class Member is also an Aggrieved Employee, one check may be issued that aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

11. DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments

Participating Class Members will receive an Individual Settlement Payment and Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted to Legal Aid at Work, the *cy pres* recipient agreed to by the Parties. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel along with a proposed amended judgment that is consistent with the provisions of Code of Civil Procedure section 384. By signing this Agreement, the Parties and their counsel agree that they have no interest in the governance of, or conflict of interest with, the *cy pres* recipient.

B. Funding of Settlement

The Parties have agreed that Defendant shall fund the settlement through three separate payments spread out over time, as described below. Defendant shall make payment of the Gross Settlement Amount (as may be increased pursuant to Paragraph 17 of this Agreement) to the Settlement Administrator as follows: (1) forty percent (40%) of the Gross Settlement

1 Amount (\$600,000) and related Employer Taxes on the wages portion of this amount to be paid
2 within ten (10) days of Final Approval Date; (2) thirty percent (30%) of the Gross Settlement
3 Amount (\$450,000) and related Employer Taxes to be paid within six (6) months of the Final
4 Approval Date; and (3) the remaining thirty percent (30%) of the Gross Settlement Amount
5 (\$450,000) and related Employer Taxes to be paid within twelve (12) months of the Final
6 Approval Date, to be paid to the Settlement Administrator pursuant to Internal Revenue Code
7 section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”) with an
8 FDIC insured banking institution, for distribution in accordance with this Agreement and the
9 Court’s Orders and subject to the conditions described herein.

10 **C. Time for Distribution**

11 Within seven (7) calendar days after payment of each installment referenced in paragraph
12 11.B. above by Defendant, or as soon thereafter as practicable, the Settlement Administrator shall
13 distribute all payments due from the QSA (in proportion to the percentage of the Gross Settlement
14 Amount paid for that installment) for: (1) the Service Awards to Plaintiffs, as specified in this
15 Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid to
16 Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
17 Administration Costs, as specified in this Agreement and approved the Court; (4) the LWDA
18 Payment, as specified in this Agreement and approved by the Court; (5) Individual PAGA
19 Payments to Aggrieved Employees, as specified in this Agreement and approved by the Court;
20 and (6) Individual Settlement Payments to Participating Class Members, less applicable taxes
21 and withholdings, as specified in this Agreement and approved by the Court. All interest accrued
22 shall be for the benefit of the Class Members and distributed on a *pro rata* basis to Participating
23 Class Members based on the number of pay periods worked by them in the Class Period, as
24 outlined above.

25 **12. ATTORNEYS’ FEES AND LITIGATION COSTS**

26 Class Counsel shall apply for an award of attorneys’ fees of up to 35% of the Gross
27 Settlement Amount, which amounts to Five Hundred Twenty-Five Thousand Dollars and Zero
28 Cents (\$525,000.00), unless the Gross Settlement Amount is escalated pursuant to Paragraph 17

of this Agreement. Class Counsel shall further apply for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to Fifty Thousand Dollars and Zero Cents (\$50,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the Class and PAGA actions. The "future" aspect of the amounts stated herein includes, without limitation, all time and expenses expended by Class Counsel (including any appeals therein). There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendant for such work unless, in the event of a material breach of this Agreement by Defendant, Plaintiffs are required to move the Court for enforcement of this Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

13. SERVICE AWARDS TO PLAINTIFFS

Named Plaintiffs shall seek, and Defendant shall not oppose, Service Awards in an amount not to exceed to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to Plaintiff Paningbatan and not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Todd, for a total of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to Plaintiffs for participation in and assistance with the Class Action. Service Awards awarded to Plaintiffs shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves the Service Awards to Plaintiffs in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

14. TAXATION AND ALLOCATION

A. Each Individual Settlement Share shall be allocated as follows: 5% as wages (to be reported on an IRS Form W2); and 95% as non-wage payments, interest, and penalties (to be reported on an IRS Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties agree that the employees' share of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share will be withheld from the Individual

1 Settlement Share in order to yield the Individual Settlement Payment. The amount of federal
2 income tax withholding will be based upon a flat withholding rate for supplemental wage
3 payments in accordance with Treasury Regulation § 31.3402(g)-1(a)(2) as amended or
4 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
5 withholding codes or regulations.

6 **B.** Forms W-2 and/or Forms 1099 will be distributed by the Settlement
7 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
8 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
9 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
10 set forth in this Section may be modified in a manner to bring Defendant into compliance with
11 any such changes.

12 **C.** All Employer Taxes shall be paid by Defendant separately, apart and above from
13 the Gross Settlement Amount. Defendant shall remain liable to pay the employer’s share of
14 payroll taxes on the wages portion of the Individual Settlement Payment as described above.

15 **D.** Neither Counsel for Plaintiffs nor Defendant intend anything contained in this
16 Agreement to constitute legal advice regarding taxes or taxability of any amount paid hereunder,
17 nor shall anything in this Agreement be relied upon as such within the meaning of United States
18 Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise. The Settlement
19 Notice shall advise that Class Members shall be solely and legally responsible for paying all other
20 applicable taxes on their respective Individual Settlement Payments and Individual PAGA
21 Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes,
22 penalties, or interest arising as a result of the payments.

23 **E.** None of the payments made pursuant to this Agreement shall be considered for
24 purposes of determining eligibility for, vesting or participation in, or contributions to any benefit
25 plan, including, without limitation, all plans subject to the Employee Retirement and Income
26 Security Act of 1974 (“ERISA”). Payments shall not be considered as a payment of wages or
27 compensation under the terms of any applicable benefit plan and shall not affect participation in,
28 eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits

1 under any applicable benefit plan. Any amounts paid will not impact or modify any previously
2 credited hours of service or compensation taken into account under any benefit plan sponsored
3 or contributed to by Defendant or any jointly-trusted benefit plan. For purposes of this
4 Agreement, “benefit plan” means each and every “employee benefit plan” as defined in 29 U.S.C.
5 § 1002(3), and, even if not thereby included, any bonus, pension, stock option, stock purchase,
6 stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance,
7 hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan,
8 practice, program, or policy.

9 **15. PRIVATE ATTORNEYS’ GENERAL ACT ALLOCATION**

10 The Parties agree to allocate Two Hundred Thousand Dollars and Zero Cents
11 (\$200,000.00) of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA,
12 seventy-five percent (75%) of the amount allocated toward PAGA (\$150,000.00) will be paid to
13 the LWDA (*i.e.*, the LWDA Payment), and twenty-five percent (25%) (\$50,000.00) will be
14 distributed to Aggrieved Employees (*i.e.*, the PAGA Payment) on a *pro rata* basis, based upon
15 their respective Workweeks.

16 **16. COURT APPROVAL**

17 This Agreement is contingent upon an order by the Court granting Final Approval of the
18 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
19 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
20 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
21 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
22 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
23 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
24 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
25 the Settlement Agreement being voided or not approved, and which control in such an event.

26 **17. ESCALATION CLAUSE BASED ON INCREASE IN WORKWEEKS**

27 The Parties are entering into this Settlement in reliance on the records produced by
28 Defendants and BlueCrew, which indicate that the Settlement Class Members worked an

1 estimated 28,632 Workweeks during the Class Period. In the event it is determined that the
2 number of Workweeks worked by Settlement Class Members during the Class Period increases
3 by more than 5% over the estimated 28,632 Workweeks worked, then the Gross Settlement
4 Amount shall be increased proportionally by the Workweeks worked in the Class Period in excess
5 of 30,064 [5% above estimated WWs] Workweeks, multiplied by the Workweek Value. The
6 Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement
7 Amount (\$1,500,000.00) by 28,632 Workweeks. The Parties agree that the Workweek Value
8 amounts to \$52.39 per Workweek ($\$1,500,000.00 / 28,632 \text{ Workweeks}$). Thus, for example,
9 should there be 31,500 Workweeks worked by Class Members in the Class Period, then the Gross
10 Settlement Amount shall be increased by \$75,232.04 ($(31,500 \text{ Workweeks} - 30,064 \text{ Workweeks})$
11 $\times \$52.39 \text{ per Workweek}$).

12 **18. NOTICE OF JUDGMENT**

13 In addition to any duties set out herein, the Settlement Administrator shall provide
14 notice of the Final Judgment entered in the Action by posting the same on its website for a
15 period of no less than four (4) years.

16 **19. MISCELLANEOUS PROVISIONS**

17 **A. Interpretation of the Agreement**

18 This Agreement constitutes the entire agreement between the Parties with respect to its
19 subject matter. Except as expressly provided herein, this Agreement has not been executed in
20 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
21 written representations or terms shall modify, vary or contradict its terms. In entering into this
22 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
23 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
24 enforced under the laws of the State of California, both in its procedural and substantive aspects,
25 without regard to its conflict of law provisions. Any claim arising out of or relating to the
26 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
27 Court of the State of California for the County of San Francisco, and Plaintiffs and Defendant
28 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection

1 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties, and
2 each of them, participated in the negotiation and drafting of this Agreement and had available to
3 them the advice and assistance of independent counsel. As such, neither Plaintiffs nor Defendant
4 may claim that any ambiguity in this Agreement should be construed against the other. The
5 Agreement may be modified only by a writing signed by counsel for the Parties and approved by
6 the Court.

7 **B. Further Cooperation**

8 The Parties and their respective attorneys shall proceed diligently to prepare and execute
9 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
10 necessary to consummate the Settlement as expeditiously as possible. The Parties agree to work
11 together, in good faith, to do everything necessary to obtain approval of the settlement and to
12 cure any minor or procedural issues that may have caused the Court initially to deny approval of
13 the Agreement. The Parties agree that they will not take any action inconsistent with this
14 Agreement, including, without limitation, encouraging Class Members to opt out of the
15 Settlement. In the event the Court finds that any Party has taken actions inconsistent with the
16 Settlement, including, without limitation, encouraging Class Members to opt out of the
17 Settlement, the Court may take any corrective actions, including enjoining any Party from
18 communicating regarding the Settlement on an *ex parte* basis, issuing (a) corrective notice(s),
19 awarding monetary, issue, evidentiary and/or terminating sanctions against that Party, and/or
20 enforcing this Agreement despite the presence of opt-outs and/or objections.

21 **C. Counterparts**

22 The Agreement may be executed in one or more actual or non-original counterparts, all
23 of which will be considered one and the same instrument, and all of which will be considered
24 duplicate originals.

25 **D. Authority**

26 Each individual signing below warrants that he or she has the authority to execute this
27 Agreement on behalf of the party for whom or which that individual signs.
28

E. No Third-Party Beneficiaries

Plaintiffs, Participating Class Members, Aggrieved Employees, Class Counsel and Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

F. Deadlines Falling on Weekends or Holidays

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday or legal holiday, that deadline shall be continued until the following business day.

G. Severability

In the event that one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

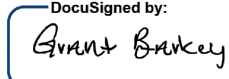
Dated: _____, 2023

KUANETTA VICTORIA TODD
Plaintiff and Class Representative

Dated: _____, 2023

FLOUZEL PANINGBATAN
Plaintiff and Class Representative

10/23/2023
Dated: _____, 2023

DocuSigned by:

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MOTIVATE, LLC
Defendant Grant Barkey
By: _____
Its: Chief Administrative officer

1 **E. No Third-Party Beneficiaries**

2 Plaintiffs, Participating Class Members, Aggrieved Employees, Class Counsel and
3 Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

4 **F. Deadlines Falling on Weekends or Holidays**

5 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday or
6 legal holiday, that deadline shall be continued until the following business day.

7 **G. Severability**

8 In the event that one or more of the provisions contained in this Agreement shall, for any
9 reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or
10 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
11 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
12 as if such invalid, illegal or unenforceable provision had never been included in this Agreement.

13
14 **IT IS SO AGREED:**

15
16 Dated: _____, 2023

KUANETTA VICTORIA TODD
Plaintiff and Class Representative

17
18
19 Dated: October 3, 2023

FLOUZEL PANINGBATAN
Plaintiff and Class Representative

20
21
22 Dated: _____, 2023

MOTIVATE, LLC

Defendant

By: _____

Its: _____

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2 Plaintiffs, Participating Class Members, Aggrieved Employees, Class Counsel and
3 Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

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6 legal holiday, that deadline shall be continued until the following business day.

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9 reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or
10 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
11 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
12 as if such invalid, illegal or unenforceable provision had never been included in this Agreement.

13
14 **IT IS SO AGREED:**

15 Dated: Oct 4, 2023, 2023

16 
Kuanetta Todd (Oct 4, 2023 13:40 PDT)

17 _____
KUANETTA VICTORIA TODD
Plaintiff and Class Representative

18
19 Dated: _____, 2023

20 _____
FLOUZEL PANINGBATAN
Plaintiff and Class Representative

21
22 Dated: _____, 2023

23 _____
MOTIVATE, LLC

24 Defendant

25 By: _____

26 Its: _____

AGREED AS TO FORM:

Dated: 10/5, 2023

Vedang J. Patel

DAVID D. BIBIYAN

VEDANG J. PATEL

Counsel for Plaintiffs

Dated: _____, 2023

JOHN A. LOFTON

Counsel for Plaintiffs

Dated: _____, 2023

MICHAEL J. BURNS

ERIC E. HILL

Counsel for Defendant Motivate LLC

AGREED AS TO FORM:

Dated: _____, 2023

DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiffs

Dated: October 23, 2023

JOHN A. LOFTON
Counsel for Plaintiffs

Dated: October 23, 2023

MICHAEL J. BURNS
ERIC E. HILL
Counsel for Defendant Motivate LLC

Exhibit A

BIBIYAN LAW GROUP, P.C.

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Attorneys for Plaintiffs, KUANETTA VICTORIA TODD,
and FLOUZEL PANINGBATAN on behalf of themselves and
all others similarly situated and aggrieved

[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

KUANETTA VICTORIA TODD, an
individual, and FLOUZEL PANINGBATAN,
an individual, on behalf of themselves and all
others similarly situated and aggrieved,

Plaintiffs,

v.

MOTIVATE LLC., a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CGC-23-605052

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. VIOLATION OF LABOR CODE § 227.3;
10. UNFAIR COMPETITION; and
11. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS' GENERAL ACT.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

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JOHN A. LOFTON, ESQ. (222259)
Aiman-Smith & Marcy, P.C.
7677 Oakport Street, Suite 1150
Oakland, CA 94621
Telephone: 510-817-2728
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Attorneys for Plaintiffs, KUANETTA VICTORIA TODD,
and FLOUZEL PANINGBATAN on behalf of themselves and
all others similarly situated and aggrieved

COMES NOW plaintiff KUANETTA VICTORIA TODD (“Plaintiff Todd”) and FLOUZEL PANINGBATAN (“Plaintiff Paningbatan” and together with Plaintiff Todd, “Plaintiffs”), on behalf of themselves, and all others similarly situated and aggrieved, and allege as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against MOTIVATE LLC, a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“MOTIVATE” and collectively, with DOES 1 through 100, as further defined below, “Defendants”), on behalf of Plaintiff Todd and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiffs and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code §§96, 98.6, 201-204, 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 247.5, 404, 432, 432.3, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.5, 1198.5, 1527, 2802, 2810.5, 3366, 3457, 6401, 6402, 6403, 6409.6, 8397.4 and I.W.C. Wage Orders Nos. 4-2001 and 9-2001 (8 C.C.R. §§11040, 11090) on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiffs

3. Plaintiff KUANETTA VICTORIA TODD is a resident of the State of California. Plaintiff Todd alleges that, at all relevant times herein, Defendants employed Plaintiff Todd as a non-exempt employee, with duties that included, but were not limited to, inspecting, evaluating and maintaining bike share stations and bicycles, performing repairs, and responding to reported

1 problems. Plaintiff Todd alleges that she worked for Defendants from approximately October of
2 2022 through approximately December of 2022.

3 4. Plaintiff FLOUZEL PANINGBATAN is a resident of the State of California. At all
4 relevant times herein, Defendants employed Plaintiff Paningbatan as a non-exempt employee, with
5 duties that included, but were not limited to, inspecting, evaluating and maintaining bike share
6 stations and bicycles, performing repairs, and responding to reported problems. Plaintiff
7 Paningbatan worked for Defendants from approximately June 2019 through approximately
8 December 2019.

9 **B. Defendants**

10 5. Plaintiffs are informed and believe, and based thereon allege, that defendant
11 MOTIVATE LLC is, and at all times relevant hereto was, a limited liability company organized and
12 existing under and by virtue of the laws of the State of California, and doing business in the County
13 of San Francisco, State of California.

14 6. The true names and capacities, whether individual, corporate, associate or otherwise,
15 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
16 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
17 Plaintiffs are informed and believe, and based thereon allege, that each of the defendants designated
18 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
19 Plaintiffs will seek leave of court to amend this First Amended Complaint to reflect the true names
20 and capacities of the defendants designated hereinafter as DOES when such identities become
21 known. Plaintiffs are informed and believe, and based thereon allege, that each defendant acted in
22 all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme,
23 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
24 attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to
25 "Defendants," it shall include MOTIVATE and any of their parent, subsidiary, or affiliated
26 companies within the State of California, as well as DOES 1 through 100 identified herein.

27 ///

28 ///

JOINT LIABILITY ALLEGATIONS

7. Plaintiffs are informed and believe, and based thereon allege, that all the times mentioned herein, each of the Defendants was the agent, principal, employee, employer, representative, joint venture or co-conspirator of each of the other defendants, either actually or ostensibly, and in doing the things alleged herein, acted within the course and scope of such agency, employment, joint venture and conspiracy.

8. All the acts and conduct described herein of each and every corporate defendant was duly authorized, ordered, and directed by the respective and collective defendant corporate employers, and the officers and management-level employees of said corporate employers. In addition thereto, said corporate employers participated in the aforementioned acts and conduct of their said employees, agents and representatives, and each of them; and upon completion of the aforesaid acts and conduct of said corporate employees, agents and representatives, the defendant corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the aforementioned corporate employees, agents and representatives.

9. Plaintiffs are further informed believe and based thereon allege that DOES 51-100 violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

10. Plaintiffs are informed and believe, and based thereon allege, that there exists such a unity of interest and ownership between Defendants, and each of them, that their individuality and separateness have ceased to exist.

11. Plaintiffs are informed and believe, and based thereon allege that DOES 1 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with DOES 51-100 and DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following reasons:

- A. The Alter Ego Defendants are completely dominated and controlled by the Individual Defendants who personally committed the wrongful and illegal acts and violated the laws as set forth in this Complaint, and who has hidden and currently hide behind the

1 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
2 other wrongful or inequitable purpose;

3 B. The Individual Defendants derive actual and significant monetary benefits by and
4 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
5 Defendants as the funding source for the Individual Defendants' own personal
6 expenditures;

7 C. Plaintiffs are informed and believe and thereon allege that the Individual Defendants
8 and the Alter Ego Defendants, while really one and the same, were segregated to
9 appear as though separate and distinct for purposes of perpetrating a fraud,
10 circumventing a statute, or accomplishing some other wrongful or inequitable
11 purpose;

12 D. Plaintiffs are informed and believe and thereon allege that the business affairs of the
13 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
14 mentioned herein were, so mixed and intermingled that the same cannot reasonably
15 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
16 are, and at all relevant times mentioned herein were, used by the Individual
17 Defendants as mere shells and conduits for the conduct of certain of their, and each
18 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
19 herein were, the alter egos of the Individual Defendants;

20 E. The recognition of the separate existence of the Individual Defendants and the Alter
21 Ego Defendants would promote injustice insofar that it would permit defendants to
22 insulate themselves from liability to Plaintiffs for violations of the Civil Code, Labor
23 Code, and other statutory violations. The corporate existence of these defendants
24 should thus be disregarded in equity and for the ends of justice because of such
25 disregard is necessary to avoid fraud and injustice to Plaintiffs herein;

26 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
27 Defendants (and vice versa), and the fiction of their separate corporate existence must
28 be disregarded;

13. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of Civil Procedure section 410.10.

14. Venue is proper in San Francisco County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, San Francisco County is where the causes of action complained of herein arose; the county in which the employment relationship with Plaintiff Todd began; the county in which performance of the employment contract, or part of it, between Plaintiff Todd and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff Todd and Defendants, was actually performed; and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff Todd and Class Members in San Francisco County, and because Defendants employ numerous Class Members in San Francisco County.

15. Plaintiffs are “aggrieved employees” under PAGA, as Plaintiffs were employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), plus reasonable attorneys’ fees and costs, for Plaintiffs and all other aggrieved current and former employees of Defendants during the civil penalty period.

16. Specifically, Plaintiffs seeks to recover PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

17. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated Labor Code §§96, 98.6, 201-204, 210, 212, 213, 221, 223, 226, 226.3, 226.7,

1 227.3, 232, 232.5, 245, 246, 247.5, 404, 432, 432.3, 432.5, 432.6, 432.7, 510, 512, 558, 558.1,
2 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.5, 1198.5, 1527, 2802, 2810.5, 3366,
3 3457, 6401, 6402, 6403, 6409.6, 8397.4 and I.W.C. Wage Orders Nos. 4-2001 and 9-2001 (8 C.C.R.
4 §§11040, 11090).

5 18. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
6 such as Plaintiffs, on behalf of Plaintiffs and all other aggrieved current and former employees
7 within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
8 specified in Labor Code section 2699.3.

9 19. On or around February 21, 2023, plaintiff Todd provided written notice pursuant to
10 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
11 Defendants' violation of various, including the herein-described, provisions of the Labor Code, to
12 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
13 them.

14 20. On or around February 27, 2020 plaintiff Paningbatan provided written notice
15 pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested,
16 of Defendants' violation of various, including the herein-described, provisions of the Labor Code,
17 to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
18 them. On or around February 24, 2023 and March 9, 2023, plaintiff Paningbatan submitted and
19 served amended PAGA notices.

20 21. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
21 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
22 calendar days.

23 22. On June 8, 2020, Plaintiff Paningbatan filed a complaint in Alameda County Superior
24 Court alleging individual claims as well as a claim for penalties under PAGA. The case was
25 subsequently removed to the U.S. District Court for the Northern District of California. Plaintiff
26 Paningbatan has settled her individual claims, leaving only the PAGA claim at issue.

27 23. On or around March 8, 2023, plaintiff Todd filed a wage and hour class action
28 alleging that, during the Class Period, Defendant, as it pertains to Class Members: (1) failed to pay

1 overtime wages; (2) failed to pay minimum wages; (3) failed to pay all wages due upon termination
2 or resignation; (4) failed to provide accurate and itemized wage statements; (5) failed to timely pay
3 wages during employment; (6) failed to indemnify for business expenses; (7) failed to pay unused
4 paid vacation time; and (8) engaged in unfair competition (the “Class Action Complaint”).

5 24. On or around April 27, 2023, plaintiff Todd filed a separate representative complaint
6 in San Francisco County Superior Court, alleging a single cause of action for civil penalties pursuant
7 to PAGA for various alleged Labor Code violations specified in the PAGA Notice (the “PAGA
8 Complaint”).

9 25. The Parties have agreed to stipulate to Plaintiffs filing a First Amended Complaint
10 alleging against Defendants the same causes of action identified above, plus a cause of action for
11 PAGA penalties, and including plaintiff Paningbatan as named plaintiff. The Parties have stipulated
12 that any statutes of limitations, laches, or similar time-related affirmative defenses will relate back
13 to the original actions. Hence, this First Amended Complaint, which will be the operative complaint
14 in the Action (the “Operative Complaint”).

15 **FACTUAL BACKGROUND**

16 26. For at least four (4) years prior to the filing of this action and continuing to the
17 present, Defendants have, at times, failed to pay overtime wages to Plaintiffs and Class Members,
18 or some of them, in violation of California state wage and hour laws as a result of, without limitation,
19 Plaintiffs and Class Members working over eight (8) hours per day, forty (40) hours per week, and
20 seven consecutive work days in a work week without being properly compensated for hours worked
21 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
22 worked on the seventh consecutive work day in a work week by, among other things, failing to
23 accurately track and/or pay for all hours actually worked at the proper overtime rate of pay to the
24 detriment of Plaintiffs and Class Members.

25 27. For at least four (4) years prior to the filing of this Action and continuing to the
26 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members,
27 or some of them, in violation of California state wage and hour laws as a result of, among other
28 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular

1 rate of pay that is above the minimum wage to the detriment of Plaintiffs and Class Members.

2 28. For at least (4) years prior to the filing of this action and continuing to the present,
3 Defendants have, at times, failed to provide Plaintiffs and Class Members, or some of them, full,
4 timely thirty (30) minute uninterrupted meal periods for days on which they have worked more than
5 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
6 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
7 for such unprovided meal periods as required by California wage and hour laws.

8 29. For at least (4) years prior to the filing of this action and continuing to the present,
9 Defendants have, at times, failed to authorize Plaintiffs and Class Members, or some of them, to
10 take rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and
11 failed to provide compensation for such unprovided rest periods as required by California wage and
12 hour laws.

13 30. For at least three (3) years prior to the filing of this action and continuing to the
14 present, Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
15 full amount of their wages owed to them upon termination and/or resignation as required by Labor
16 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
17 minimum wages, premium wages and vacation pay pursuant to Labor Code section 227.3.

18 31. For at least one (1) year prior to the filing of this Action and continuing to the present,
19 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with
20 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
21 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
22 hours worked at each hourly rate; and other such information as required by Labor Code section
23 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
24 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

25 32. For at least one (1) year prior to the filing of this action and continuing to the present,
26 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the full
27 amount of their wages for labor performed in a timely fashion as required under Labor Code section
28 204.

1 33. For at least three (3) years prior to the filing of this action and continuing to the
2 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
3 costs incurred in purchasing and/or providing unreturned deposits for mandatory work uniforms;
4 laundering mandatory work uniforms; mileage and/or gas costs incurred in driving personal vehicles
5 for work-related purposes; using cellular phones for work-related purposes; and purchasing tools
6 and equipment necessary to perform work duties.

7 34. For at least three (3) years prior to the filing of the action and continuing to the
8 present, Defendants have, at times, failed to return interest on deposits made by Plaintiff and Class
9 Members, or some of them, for uniforms.

10 35. For at least four (4) years prior to the filing of this action and continuing to the
11 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated
12 employees or former employees within the State of California with compensation at their final rate
13 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

14 36. At all relevant times mentioned herein, Defendants had and have a policy or practice
15 of failing to pay overtime wages to Plaintiffs and other Aggrieved Employees in the State of
16 California in violation of California state wage and hour laws as a result of, without limitation,
17 Plaintiffs and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours
18 per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
19 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
20 worked; engaging, suffering, or permitting employees to work off the clock, including, without
21 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to
22 complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
23 answering calls from dispatch and others), to clock out for meal periods and continue working, to
24 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
25 clock, to make phone calls or drive off the clock; failing to include all forms of remuneration,
26 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
27 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
28 additional compensation was earned for the purpose of calculating the overtime rate of pay;

1 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
2 less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment
3 of Plaintiffs and other Aggrieved Employees.

4 37. At all relevant times mentioned herein, Defendants had and have a practice or policy
5 of failing to compensate Plaintiffs and other Aggrieved Employees with minimum wages for all
6 hours worked or otherwise under Defendants' control as a result of, without limitation, failing to
7 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-
8 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
9 tasks after clocking (including answering calls from dispatch and others), to clock out for meal
10 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to
11 attend company meetings off the clock, to make phone calls or drive off the clock; detrimental
12 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
13 than actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and
14 failing to pay split shift premiums, to the detriment of Plaintiffs and other Aggrieved Employees.

15 38. At all relevant times mentioned herein, Defendants had and have a policy or practice
16 of failing to provide Plaintiffs and other Aggrieved Employees a thirty (30) minute uninterrupted,
17 timely, and complete meal period for days on which the employee worked in excess of five (5) and
18 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
19 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
20 not providing timely meal periods; failing to provide first and second meal periods; providing short
21 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
22 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
23 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
24 employees worked, as required by California wage and hour laws.

25 39. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to provide Plaintiffs and other Aggrieved Employees paid, uninterrupted, timely, and
27 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
28 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest

1 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
2 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
3 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
4 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

5 40. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
7 Plaintiffs and other Aggrieved Employees with itemized wage statements that accurately reflect
8 gross wages earned; total hours worked by the employee; net wages earned; all deductions; all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate by the employee; the legal name of the employer and/or the name and
11 address of the legal entity securing the employer's services if the employer is a farm labor contractor;
12 and other such information as required by Labor Code section 226, subdivision (a).

13 41. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
15 Plaintiffs and other Aggrieved Employees with documents signed to obtain or hold employment
16 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
17 under Labor Code section 1174, making it difficult for Plaintiffs and other Aggrieved Employees to
18 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
19 Aggrieved Employees.

20 42. At all relevant times mentioned herein, Defendants had and have a policy or practice
21 of failing to timely pay Plaintiffs and other Aggrieved Employees, among other wages, all wages
22 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
23 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
24 Code sections 201, 202, and 203.

25 43. At all relevant times herein, Defendants had and have a policy or practice of failing to
26 pay Plaintiffs and Aggrieved Employees their paid time off and vacation time owed upon separation
27 of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and
28 applicable Wage Orders.

1 44. At all relevant times mentioned herein, Defendants have had a policy or practice of
2 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
3 limitation, Plaintiffs and other Aggrieved Employees, with their costs incurred for driving personal
4 vehicles (i.e., mileage and gas), purchasing uniforms, providing uniform and other deposits,
5 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including
6 work boots to handle oil), for the purchase and maintenance of cellular phones and cellular phone
7 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions
8 of Defendants, as required by Labor Code 2802.

9 45. At all relevant times mentioned herein, Defendants have had a policy or practice of
10 failing to comply with the notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft
11 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved
12 Employees with the rates of pay and overtime rates of pay applicable to their employment
13 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
14 name, address, and telephone number of the workers' compensation insurance carrier; information
15 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
16 under Labor Code section 2810.5.

17 46. At all relevant times mentioned herein, Defendants failed to provide Plaintiffs and
18 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
19 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
20 permit its use upon request as contemplated under California laws, to the detriment of Plaintiffs and
21 all other Aggrieved Employees.

22 47. At all relevant times mentioned herein, Defendants have had a policy or practice of
23 failing to pay Plaintiffs and Aggrieved Employees their wages in accordance with Labor Code
24 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
25 any calendar month shall be paid for between the 16th and 26th day of the month during which the
26 labor was performed, and labor performed between the 16th and the last day, inclusive of any
27 calendar month, shall be paid for between the 1st and 10th day of the following month."

28 ///

1 48. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge
3 and experience they obtained at Defendants for purposes of competing with Defendants, including,
4 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
5 a prospective employer, and from disclosing who else works at Defendants and under what
6 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
7 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
8 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
9 Code sections 232, 232.5, and 1197.5, subdivision (k).

10 49. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
11 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
12 to their managers or outside to private attorneys or government officials, among others, in violation
13 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
14 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies
15 and/or practices prevent Plaintiffs and/or other Aggrieved Employees from disclosing information
16 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
17 of Labor Code section 232 and 232.5.

18 50. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
19 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
20 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
21 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
22 subdivision (k). Plaintiffs are informed and believe that this lawful conduct includes the exercise of
23 Plaintiffs' and/or other Aggrieved Employee's constitutional rights of freedom of speech and
24 economic liberty.

25 51. Plaintiffs, on their own behalf and on behalf of Class Members, bring this action
26 pursuant to, including but not limited to, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204,
27 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5,
28 1194, 1197, 1197.1, 1997.5, 1998.5, 2699, 2802, 2810.5, and California Code of Regulations, Title

1 8, section 11040, seeking overtime wages, minimum wages, failure to pay timely wages, waiting
2 time penalties, wage statement penalties, failure to indemnify work-related expenses, failing to pay
3 vested vacation time at the proper rate of pay, other such provisions of California law, and
4 reasonable attorneys' fees and costs.

5 52. Plaintiffs, on Plaintiffs' own behalf and on behalf of Class Members, pursuant to
6 Business and Professions Code sections 17200 through 17208, also seek (an) injunction(s)
7 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
8 appropriate and effective means to prevent further violations, as well as all monies owed but
9 withheld and retained by Defendants to which Plaintiffs and Class Members are entitled, as well as
10 restitution of amounts owed.

11 53. Plaintiffs, in Plaintiffs' representative capacity, seek civil penalties under Labor Code
12 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
13 California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
14 Employees pursuant to PAGA.

15 **CLASS ACTION ALLEGATIONS**

16 54. Plaintiff Todd brings this class action on behalf of herself and Class Members as a
17 class action pursuant to Code of Civil Procedure section 382. Plaintiff Todd seeks to represent a
18 class of all current and former non-exempt employees of Defendants within the State of California
19 at any time commencing four (4) years preceding the filing of Plaintiff Todd's complaint up until
20 the time that notice of the class action is provided to the class (collectively referred to as "Class
21 Members").

22 55. Plaintiff Todd reserves the right under California Rules of Court rule 3.765,
23 subdivision (b) to amend or modify the class description with greater specificity, further divide the
24 defined class into subclasses, and to further specify or limit the issues for which certification is
25 sought.

26 56. This action has been brought and may properly be maintained as a class action under
27 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
28 of interest in the litigation and the proposed Class is easily ascertainable.

1 **A. Numerosity**

2 57. The potential Class Members as defined are so numerous that joinder of all the
3 members of the Class is impracticable. While the precise number of Class Members has not been
4 determined yet, Plaintiff Todd is informed and believes that there are over seventy-five (75) Class
5 Members employed by Defendants within the State of California.

6 58. Accounting for employee turnover during the relevant periods necessarily increases
7 this number. Plaintiff Todd alleges Defendants' employment records would provide information as
8 to the number and location of all Class Members. Joinder of all members of the proposed Class is
9 not practicable.

10 **B. Commonality**

11 59. There are questions of law and fact common to Class Members. These common
12 questions include, but are not limited to:

- 13 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
14 hours worked at a proper overtime rate of pay?
- 15 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to
16 pay for all other time worked at the employee's regular rate of pay and a rate of
17 pay that is greater than the applicable minimum wage?
- 18 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
19 Class Members to take compliant meal periods?
- 20 D. Did Defendants violate Labor Code section 226.7 by not providing Class
21 Members with additional wages for missed or interrupted meal periods?
- 22 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
23 Class Members to take complaint rest periods?
- 24 F. Did Defendants violate Labor Code section 226.7 by not providing Class
25 Members with additional wages for missed rest periods?
- 26 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
27 Members upon termination or resignation all wages earned?
- 28 H. Are Defendants liable to Class Members for waiting time penalties under Labor

1 Code section 203?

2 I. Did Defendants violate Labor Code section 226, subdivision (a) by not
3 furnishing Class Members with accurate wage statements?

4 J. Did Defendants fail to pay Class Members in a timely fashion as required under
5 Labor Code section 204?

6 K. Did Defendants fail to indemnify Class Members for all necessary expenditures
7 or losses incurred in direct consequence of the discharge of their duties or by
8 obedience to the directions of Defendants as required under Labor Code section
9 2802?

10 L. Did Defendants violate Labor Code section 227.3 by not providing Class
11 Members with compensation at their final rate of pay for vested paid vacation
12 time.

13 M. Did Defendants violate the Unfair Competition Law, Business and Professions
14 Code section 17200, *et seq.*, by their unlawful practices as alleged herein?

15 N. Are Class Members entitled to restitution of wages under Business and
16 Professions Code section 17203?

17 O. Are Class Members entitled to costs and attorneys' fees?

18 P. Are Class Members entitled to interest?

19 **C. Typicality**

20 60. The claims of Plaintiff Todd herein alleged are typical of those claims which could
21 be alleged by any Class Members, and the relief sought is typical of the relief which would be sought
22 by each Class Member in separate actions. Plaintiff Todd and Class Members sustained injuries and
23 damages arising out of and caused by Defendants' common course of conduct in violation of laws
24 and regulations that have the force and effect of law and statutes as alleged herein.

25 **D. Adequacy of Representation**

26 61. Plaintiff Todd will fairly and adequately represent and protect the interest of Class
27 Members. Counsel who represents Plaintiffs is competent and experienced in litigating wage and
28 hour class actions.

1 **E. Superiority of Class Action**

2 62. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
4 questions of law and fact common to Class Members predominate over any questions affecting only
5 individual Class Members. Class Members, as further described therein, have been damaged and
6 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
7 violation of the Labor Code at times, as set out herein.

8 63. Class action treatment will allow Class Members to litigate their claims in a manner
9 that is most efficient and economical for the parties and the judicial system. Plaintiff Todd is
10 unaware of any difficulties that are likely to be encountered in the management of this action that
11 would preclude its maintenance as a class action.

12 **FIRST CAUSE OF ACTION**

13 **(Failure to Pay Overtime Wages – Against All Defendants)**

14 64. Plaintiff Todd realleges and incorporates by reference all of the allegations contained
15 in the preceding paragraphs as though fully set forth hereat.

16 65. At all relevant times, Plaintiff Todd and Class Members were employees or former
17 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
18 Wage Orders.

19 66. At all times relevant to this First Amended Complaint, Labor Code section 510 was
20 in effect and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of
21 eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be
22 compensated at the rate of no less than one and one-half times the regular rate of pay for an
23 employee.”

24 67. At all times relevant to this First Amended Complaint, Labor Code section 510
25 further provided that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate
26 of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight
27 hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the
28 regular rate of pay.”

68. Four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff Todd and Class Members, at times, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay to the detriment of Plaintiff Todd and Class Members.

69. Accordingly, by requiring Plaintiff Todd and Class Members to, at times, work greater than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

70. As a result of the unlawful acts of Defendants, Plaintiff Todd and Class Members have been deprived of overtime wages in amounts to be determined at trial and are entitled to recovery, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194 and 1199, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

71. Plaintiff Todd realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

72. At all relevant times, Plaintiff Todd and Class Members were employees or former employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

73. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff Todd and Class Members were entitled to receive minimum wages for all hours worked or otherwise under Defendants' control.

74. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at

1 their regular rate of pay that is above the minimum wage to the detriment of Plaintiff Todd and Class
2 Members.

3 75. As a result of Defendants' unlawful conduct, Plaintiff Todd and Class Members have
4 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
5 for all hours worked or otherwise due.

6 76. Pursuant to Labor Code sections 218.6, 1194 and 1194.2, Code of Civil Procedure
7 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff Todd and Class Members are
8 entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon,
9 liquidated damages, reasonable attorneys' fees and costs of suit.

10 **THIRD CAUSE OF ACTION**

11 **(Failure to Provide Meal Periods – Against All Defendants)**

12 77. Plaintiff Todd realleges and incorporates by reference all of the allegations contained
13 in the preceding paragraphs as though fully set forth hereat.

14 78. At all relevant times, Plaintiff Todd and Class Members were employees or former
15 employees of Defendants covered by Labor Code sections 512, as well as applicable Wage Orders.

16 79. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
17 employ an employee for a work period of more than five (5) hours without a timely meal break of
18 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
19 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
20 per day without providing the employee with a second timely meal period of not less than thirty (30)
21 minutes in which the employee is relieved of all of his or her duties.

22 80. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
23 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
24 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
25 of compensation for each workday that the meal period is not provided.

26 81. For four (4) years prior to the filing of the Complaint in this Action through the
27 present, Plaintiffs and Class Members were, at times, not provided complete, timely 30-minute,
28 duty-free uninterrupted meal periods every five hours of work without waiving the right to take

1 them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay
2 at the Class Member's regular rate of compensation on the occasions that Class Members were not
3 provided compliant meal periods.

4 82. By their failure to provide Plaintiffs and Class Members compliant meal periods as
5 contemplated by Labor Code Section 512, among other California authorities, and failing, at times,
6 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
7 violated the provisions of Labor Code section 512 and applicable Wage Orders.

8 83. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
9 suffered damages in an amount, subject to proof, to the extent that they were not paid additional pay
10 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

11 84. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid
12 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
13 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
14 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

15 **FOURTH CAUSE OF ACTION**

16 **(Failure to Provide Rest Periods – Against All Defendants)**

17 85. Plaintiff Todd realleges and incorporates by reference all of the allegations contained
18 in the preceding paragraphs as though fully set forth hereat.

19 86. At all relevant times, Plaintiff Todd and Class Members were employees or former
20 employees of Defendants covered by applicable Wage Orders.

21 87. California law and applicable Wage Orders require that employers "authorize and
22 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
23 work period "or major fraction thereof." Accordingly, employees who work shifts of three-and-a-
24 half (3.5) hours to six (6) hours must be provided ten (10) minutes of paid rest period, employees
25 who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)
26 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be
27 provided thirty (30) minutes of paid rest period.

28 88. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee

1 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
2 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's
3 regular rate of compensation for each work day that the rest period is not provided.

4 89. For four (4) years prior to the filing of the Complaint in this Action through the
5 present, Plaintiffs and Class Members were, at times, not authorized or permitted to take complete,
6 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
7 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
8 Member's regular rate of compensation on the occasions that Class Members were not authorized
9 or permitted to take compliant rest periods.

10 90. By their failure, at times, to authorize and permit Plaintiffs and Class Members to
11 take rest periods contemplated by California law, and one (1) additional hour of pay at the
12 employee's regular rate of compensation for such unprovided rest periods, as alleged above,
13 Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage
14 Orders.

15 91. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
16 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
17 owed for rest periods that they were not authorized or permitted to take.

18 92. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
19 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus
20 interest and penalties thereon, attorneys' fees and costs, under Labor Code sections 226 and 226.7,
21 Code of Civil Procedure sections 1021.5, and Civil Code section 3287.

22 **FIFTH CAUSE OF ACTION**

23 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

24 93. Plaintiff Todd realleges and incorporates by reference all of the allegations contained
25 in the preceding paragraphs as though fully set forth hereat.

26 94. At all relevant times, Plaintiff Todd and Class Members were employees or former
27 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
28 Wage Orders.

1 95. Pursuant to Labor Code sections 201 and 202, Plaintiff Todd and Class Members
2 were entitled upon termination to timely payment of all wages earned and unpaid prior to
3 termination. Discharged Class Members were entitled to payment of all wages earned and unpaid
4 prior to discharge immediately upon termination. Class Members who resigned were entitled to
5 payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of
6 resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages
7 earned and unpaid at the time of resignation.

8 96. Plaintiff Todd is informed and believes, and based thereon alleges, that in the three
9 (3) years before the filing of the Complaint in this Action through the present, Defendants, due to
10 the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff Todd and
11 Class Members all wages earned prior to resignation or termination in accordance with Labor Code
12 sections 201 or 202.

13 97. Plaintiff Todd is informed and believes Defendants' failure, at times, to pay Plaintiff
14 Todd and Class Members all wages earned prior to termination or resignation in accordance with
15 Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned
16 by Plaintiffs and Class Members at the time of termination in accordance with Labor Code sections
17 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of
18 Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to
19 termination or resignation.

20 98. Pursuant to Labor Code section 203, Plaintiff Todd and Class Members are entitled
21 to waiting time penalties from the date their earned and unpaid wages were due, upon termination
22 or resignation, until paid, up to a maximum of thirty (30) days.

23 99. As a result of Defendants' unlawful conduct, Plaintiff Todd and Class Members have
24 suffered damages in an amount, subject to proof, to the extent they were not paid for all wages
25 earned prior to termination or resignation.

26 100. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
27 1021.5 and 1032, and Civil Code section 3287, Plaintiff Todd and Class Members are entitled to
28 recover waiting time penalties, interest and their costs of suit, as well.

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements – Against All Defendants)

101. Plaintiff Todd realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

102. At all relevant times, Plaintiff Todd and Class Members were employees or former employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

103. Pursuant to Labor Code section 226, subdivision (a), Plaintiff Todd and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and the name and address of the legal entity that is the employer, among other things.

104. Plaintiff Todd is informed and believes, and based thereon allege, that in the one (1) year before the filing of the Complaint in this through the present, Defendants failed to comply with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their failure, at times, to furnish Plaintiff Todd and Class Members with accurate itemized statements that accurately reflect, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and the name and address of the legal entity that is the employer, among other things.

105. Defendants' failure to, at times, provide Plaintiff Todd and Class Members with accurate wage statements was knowing, intentional and willful. Defendants had the ability to provide Plaintiff Todd and the other Class Members with accurate wage statements, but, at times, willfully provided wage statements that Defendants knew were not accurate.

106. As a result of Defendants' unlawful conduct, Plaintiff Todd and Class Members have suffered injury. The absence of accurate information on Class Members' wage statements at times has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and mathematical computations to determine the amount of wages owed; causes difficulty and expense

1 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
2 about wages and amounts deducted from wages to state and federal governmental agencies, among
3 other things.

4 107. Pursuant to Labor Code section 226, subdivision (e), Plaintiff Todd and Class
5 Members are entitled to recover \$50 for the initial pay period during the period in which violation
6 of Labor Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a
7 subsequent pay period, not to exceed an aggregate \$4,000.00 per employee.

8 108. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
9 Procedure section 1032, Civil Code section 3287, Plaintiff Todd and Class Members are entitled to
10 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
11 attorneys' fees and costs of suit.

12 **SEVENTH CAUSE OF ACTION**

13 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

14 109. Plaintiff Todd realleges each and every allegation set forth in the preceding
15 paragraphs and incorporates each by reference as though fully set forth hereat.

16 110. At all relevant times, Plaintiff Todd and Class Members were employees or former
17 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

18 111. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
19 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
20 during which the labor was performed, and labor performed between the 16th and the last day,
21 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
22 month.”

23 112. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
24 independent and apart from, any other penalty provided in this article, every person who fails to pay
25 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
26 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
27 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
28 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25

1 percent of the amount unlawfully withheld.”

2 113. Plaintiff Todd is informed and believes, and based thereon alleges, that in the one (1)
3 year before the filing of the Complaint in this Action through the present, Defendants employed
4 policies and practices that resulted in, at times, not paying Plaintiff Todd and Class Members in
5 accordance with Labor Code section 204.

6 114. Pursuant to Labor Code section 210, Plaintiff Todd and Class Members are entitled
7 to recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one
8 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
9 for each subsequent violation in connection with each payment that was made in violation of Labor
10 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

11 115. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
12 1032, and Civil Code section 3287, Plaintiff Todd and Class Members are entitled to recovery of
13 penalties, interest and their costs of suit, as well.

14 **EIGHTH CAUSE OF ACTION**

15 **(Violation of Labor Code § 2802 – Against All Defendants)**

16 116. Plaintiff Todd realleges and incorporates by reference all of the allegations contained
17 in the preceding paragraphs of this First Amended Complaint as though fully set forth hereon.

18 117. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
19 his or her employee for all necessary expenditures or losses incurred by the employee in direct
20 consequence of the discharge of his or her duties . . .”.

21 118. For three (3) years prior to the filing of the Complaint in this Action through the
22 present, Defendants required Plaintiff Todd and Class Members, or some of them, to incur, at times,
23 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
24 obedience to the directions of Defendants that included, without limitation: purchasing and/or
25 providing unreturned deposits for mandatory work uniforms; laundering mandatory work uniforms;
26 mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using
27 cellular phones for work-related purposes; and purchasing tools and equipment necessary to perform
28 work duties.

1 119. During that time period, Plaintiff Todd is informed and believes, and based thereon
2 alleges that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff
3 Todd and Class Members for those losses and/or expenditures.

4 120. As a result of Defendants' unlawful conduct, Plaintiff Todd and Class Members have
5 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
6 herein-described losses and/or expenditures.

7 121. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
8 1032, and Civil Code section 3287, Plaintiff Todd and Class Members are entitled to recover
9 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
10 costs of suit.

11 **NINTH CAUSE OF ACTION**

12 **(Violation of Labor Code § 227.3 – Against All Defendants)**

13 122. Plaintiff Todd realleges and incorporates by reference all of the allegations contained
14 in the preceding paragraphs of this First Amended Complaint as though fully set forth hereon.

15 123. According to Labor Code section 227.3, whenever a contract of employment or
16 employer policy provides for paid vacations, and an employee is terminated without having taken
17 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
18 accordance with such contract of employment or employer policy respecting eligibility or time
19 served.

20 124. Plaintiff Todd is informed and believes, and based thereon alleges that, at all times
21 relevant hereto, Defendants promulgated and maintained a uniform policy providing for paid
22 vacations, and that Plaintiff Todd's employment contract with Defendants included paid vacations.

23 125. For at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendants have had a consistent policy of failing to provide Plaintiff Todd and similarly
25 situated employees or former employees within the State of California with compensation at their
26 final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

27 126. As a proximate result of Defendants' failure to pay vested vacation at the final rate
28 of Plaintiff Todd and Class Members upon their resignation or termination, Defendants violated

1 Labor Code section 227.3, entitling Plaintiff Todd and Class Members to all vested and unused
2 vacation pay at their final rate of pay, as set out in Defendants' policy or the contract of employment
3 between Plaintiff Todd and Class Members, on the one hand, and Defendants, on the other hand.

4 127. As a further proximate result of Defendants' above-described acts and/or omissions,
5 Plaintiff Todd and Class Members are entitled to recover reasonable attorneys' fees, costs of suit
6 and prejudgment interest.

7 **TENTH CAUSE OF ACTION**

8 **(Unfair Competition – Against All Defendants)**

9 128. Plaintiff Todd realleges and incorporates by reference all of the allegations contained
10 in the preceding paragraphs as though fully set forth hereat.

11 129. Plaintiff Todd is informed and believes, and based thereon alleges that the unlawful
12 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
13 and Professions Code section 17200. Due to their unlawful business practices in violation of the
14 Labor Code, Defendants have gained a competitive advantage over other comparable companies
15 doing business in the State of California that comply with their obligations to compensate employees
16 in accordance with the Labor Code.

17 130. As a result of Defendants' unfair competition as alleged herein, Plaintiff Todd and
18 Class Members have suffered injury in fact and lost money or property.

19 131. Pursuant to Business and Professions Code section 17203, Plaintiff Todd and Class
20 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
21 Code and requiring the establishment of appropriate and effective means to prevent further
22 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
23 including interest thereon, in which they had a property interest and which Defendants nevertheless
24 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
25 to Plaintiff Todd and Class Members is necessary to prevent Defendants from becoming unjustly
26 enriched by their failure to comply with the Labor Code.

27 132. Plaintiff Todd and Class Members are entitled to costs of suit under Code of Civil
28 Procedure section 1032 and interest under Civil Code section 3287.

ELEVENTH CAUSE OF ACTION

**(Civil Penalties under Labor Code Private Attorneys' General Act of 2004 –
Against All Defendants)**

133. Plaintiffs incorporate the allegations above as though they were fully set forth herein.

134. Plaintiffs bring this cause of action in a representative capacity on behalf of the general public pursuant to the California Private Attorneys General Act (Labor Code §2698, *et seq.*), and seek to vindicate their rights under the Labor Code as well as those of all other aggrieved current and former employees of Defendants.

135. As set forth above, Defendants have violated Labor Code §§96, 98.6, 201-204, 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 247.5, 404, 432, 432.3, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.5, 1198.5, 1527, 2802, 2810.5, 3366, 3457, 6401, 6402, 6403, 6409.6, 8397.4 and I.W.C. Wage Orders Nos. 4-2001 and 9-2001 (8 C.C.R. §§11040, 11090) with respect to Plaintiffs and the Representative Group, who have been injured as a result of these violations.

136. For purposes of this cause of action, the group of aggrieved employees consists of those hourly, non-exempt employees of Defendants working in California (the “Representative Group”) at any time since February 27, 2019, and through the date of entry of final judgment in this matter.

137. Plaintiffs seek to recover civil penalties for violations of the Labor Code committed by Defendants against Plaintiffs and all other aggrieved employees as set out in the PAGA Notice documents submitted to the Labor and Workforce Development Agency (“LWDA”) on February 27, 2020 and February 21, 2023, and the Amended PAGA Notice documents filed February 24, 2023 and March 9, 2023, the contents of which are incorporated herein by reference as though expressly set out herein.

138. For the violations of the Labor Code alleged, Plaintiffs and other aggrieved employees have no administrative remedies to exhaust.

139. Plaintiffs have fully complied with notice requirements under PAGA by giving written notice to both the LDWA and Defendants pursuant to Labor Code §2699.3(a)(1)(A), and by

1 paying the filing fee required by subsection (a)(1)(B) of the same.

2 140. Sixty-five calendar days have now passed since Plaintiffs gave the LWDA notice of
3 their PAGA claims, and the LWDA has not responded or taken any position as to those claims.
4 Accordingly, Plaintiffs now have the right to pursue those claims through a representative civil suit
5 pursuant to Labor Code §2699.3(a)(2)(A).

6 141. Plaintiffs have been injured as a direct and proximate result of Defendants' violations
7 of the Labor Code as set out in those PAGA Notices.

8 142. Pursuant to Labor Code §2699(a) and (f), Plaintiffs accordingly seek to recover civil
9 penalties against Defendants for the specified Labor Code violations against Plaintiffs and all other
10 aggrieved employees.

11 143. In addition, Plaintiffs seek to recover their reasonable attorneys' fees and costs
12 pursuant to Labor Code §2699(g)(1).

13 **DEMAND FOR JURY TRIAL**

14 144. Plaintiffs demand a trial by jury on all causes of action contained herein.

15 **PRAYER**

16 WHEREFORE, on behalf of themselves, Class Members and Aggrieved Employees,
17 Plaintiffs pray for judgment against Defendants as follows:

- 18 A. An order certifying this case as a Class Action;
- 19 B. An Order appointing Plaintiff Todd as Class representative and appointing
20 Plaintiffs' counsel as class counsel;
- 21 C. Damages for all wages earned and owed, including minimum overtime wages
22 and unpaid wages for vested vacation time, under Labor Code sections 510,
23 558.1, 1194, 1197 and 1199 and 227.3;
- 24 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 25 E. Damages for unpaid premium wages from missed meal and rest periods
26 under, among others, Labor Code sections 512, 558.1, and 226.7.
- 27 F. Penalties for inaccurate wage statements under Labor Code section 226,
28 subdivision (e) and 558.1;

- 1 G. Waiting time penalties under Labor Code sections 203 and 558.1;
2 H. Penalties to timely pay wages under Labor Code sections 210;
3 I. Damages under Labor Code sections 2802 and 558.1;
4 J. Preliminary and permanent injunctions prohibiting Defendants from further
5 violating the California Labor Code and requiring the establishment of
6 appropriate and effective means to prevent future violations;
7 K. Restitution of wages and benefits due which were acquired by means of any
8 unfair business practice, according to proof;
9 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
10 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
11 1174.5, 1197.1, and 2699;
12 N. An award of reasonable attorneys' fees and costs pursuant to Labor Code
13 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699.
14 O. Pre-judgment and post-judgment interest;
15 P. For attorneys' fees in prosecuting this action;
16 Q. For costs of suit incurred herein; and
17 R. For such other and further relief as the Court deems just and proper.

18
19
20 Dated: _____

BIBIYAN LAW GROUP, P.C.

21
22 BY: _____

23 VEDANG J. PATEL

24 Attorneys for Plaintiffs KUANETTA VICTORIA
25 TODD and FLOUZEL PANINGBATAN, on behalf of
26 themselves, and all others similarly situated and
27 aggrieved
28

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DATED: _____

AIMAN-SMITH & MARCY, P.C.

John A. Lofton, Esq.
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Boulevard, Suite 500, Beverly Hills, California 90211.

On _____, 2023, and pursuant to Code of Civil Procedure section 1010.6, I caused a true and correct copy of the following document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail addresses as follows:

Michael J. Burns
Eric E. Hill
SEYFARTH SHAW, LLP
560 Mission Street, 31st Floor
San Francisco, California 94105
mburns@seyfarth.com
ehill@seyfarth.com

Counsel for Motivate, LLC

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, 2023 at Beverly Hills, California.

Jennifer Echeverria

98062058v.1

Exhibit B

Superior Court of California
City and County of San Francisco
Kuanetta Victoria Todd, et al. v. Motivate LLC
Case No. CGC-23-605052.

**NOTICE TO CLASS MEMBERS OF PENDING CLASS ACTION
AND NOTICE OF HEARING ON PROPOSED SETTLEMENT**

A court authorized this notice. This is not a solicitation from a lawyer.

WHAT THIS NOTICE CONTAINS

1. Why Did I Get This Notice? 2

2. What Is This Case About? 2

3. Who Is Representing Plaintiffs and the Proposed Class? 3

4. How Do I Change My Address for Correspondence If I Want To? 3

5. What Are the Key Terms of the Settlement? 3

6. How Do I Receive Payment Under the Settlement, and How Much Can I Expect To Receive? 4

7. What Are My Options With Respect To This Notice? 5

8. When and Where Will the Court Decide Whether to Approve the Settlement? 6

1. Why Did I Get This Notice?

You are receiving this Notice in connection with the proposed settlement of a lawsuit that Plaintiffs Flouzel Paningbatan and Kuanetta Victoria Todd (“Plaintiffs”) filed against Motivate, LLC (“Defendant”) alleging violations of the California Labor Code.

The purpose of this Notice is to inform you of the pending settlement agreement in this lawsuit and your rights under it. You have received this Notice because company records indicate that you were a non-exempt employee of Motivate, LLC, either directly or through the staffing agency BlueCrew, Inc., at some point between March 8, 2019 and August 7, 2023, (the “Class Period”).

As set forth below, Defendant believes that it has complied with all provisions of the California Labor Code and has not violated any local, state or federal laws. Nevertheless, it has elected to resolve this matter to avoid the disruption, delay, and expense of continued litigation.

This Notice will provide instructions on the options available to you.

Please understand that this is not a notice of a lawsuit against you. You have not been sued. You are not required to appear in Court in response to this Notice. Please review this Notice and consider the outlined options carefully.

2. What Is This Case About?

The lawsuit alleges that Defendant violated the California Labor Code and IWC Wage Order Nos. 4-2001 and 9-2001 (8 C.C.R. §§11040, 11090). The claims include the alleged (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to pay all wages due upon termination or resignation; (4) failure to provide accurate and itemized wage statements; (5) failure to timely pay wages during employment; (6) failure to indemnify for work-related business expenses; (7) failure to pay unused paid vacation time; (8) failure to keep accurate time records, payroll records, or sick leave records; (9) failure to pay employees sick leave or the proper amount of sick leave, or failure to pay sick leave at the proper rate; (10) failure to provide meal or rest breaks; (11) failure to pay meal or rest break premiums or failure to pay meal or rest break premiums at the proper rate; (12) failure to provide compliant Wage Theft Notices; and (13) unfair competition under California Business & Professions Code §17200, *et seq.* arising out of the alleged Labor Code violations referenced in the First Amended Complaint.

The lawsuit seeks damages and penalties for these alleged violations of California’s Labor Code, as well as penalties under California’s Private Attorneys General Act (“PAGA”).

Defendant denies any wrongdoing or legal violations and through this settlement, it has not admitted to any of Plaintiffs’ asserted claims. Nevertheless, because Defendant would rather avoid the expense and delay associated with further litigation, it has chosen to resolve this matter. Put differently, even though it denies all of the pertinent allegations and contends it acted in a legal, permissible, and fair manner, Defendant has chosen to settle this matter.

Accordingly, and subject to court approval, the parties have entered a settlement agreement that provides for the certification of a class consisting of all non-exempt employees who were employed by Defendant in California at any point during the Class Period. Everyone who fits within this definition is a “Class Member” and is receiving this Notice, and because company records indicate you are such a person, you are receiving this Notice.

3. Who is Representing Plaintiffs and the Proposed Class?

Plaintiffs and those who choose to remain a Member of the Class are represented by attorneys at the law firms of Aiman-Smith & Marcy and Bibiyan Law Group, whose contact information is:

John A. Lofton
Aiman-Smith & Marcy
7677 Oakport Street, Suite 1150
Oakland, CA 94621
Tel: 510-817-2728
Website: www.asmlawyers.com
Email: jal@asmlawyers.com

David D. Bibiyan; Vedang J. Patel
Bibiyan Law Group
8484 Wilshire Blvd., Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555
Website: www.tommorlaw.com
Email: david@tomorrowlaw.com
vedang@tomorrowlaw.com

If you choose to remain a Member of the Class, you will be represented by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense as set forth below.

4. How Do I Change My Address for Correspondence If I Want To?

If, for any future reference or mailings, you wish to change the name or address listed on the envelope in which this Notice was sent, please provide that information on the Change of Address Form attached to this Notice as Form A, and return the form to the address listed on the form. You may also contact the Settlement Administrator at the address provided in Section 7 of this Notice. Of course, if the address to which this notice was sent was accurate, then you need not take any action to change or verify that address.

5. What Are the Key Terms of the Settlement?

Under the settlement, Defendant will pay \$1,500,000 (the “Gross Settlement Amount”). The Gross Settlement Amount will be paid in three installments (40%, 30%, 30%), with the first payment due ten days after the Court gives final approval to the settlement, the second payment due six months later, and the third payment due six months after that. Each installment payment will be distributed to Class Members soon after it is received by the Settlement Administrator, subject to, and in proportion with, the deductions below.

The Gross Settlement Amount will be available for distribution to Class Members who do not opt out of the settlement, after the deduction of (1) any amount awarded by the Court for Class Counsel’s attorneys’ fees and costs; (2) a payment to Plaintiffs for prosecuting the action; (3) the costs of administration of this settlement; and (4) a payment to the California Labor and Workforce Development Agency (“LWDA”). Settlement Class Members will not

QUESTIONS? Call

be responsible for these payments—they will come from the settlement fund.

Subject to final approval by the Court, the attorneys for Plaintiffs and the Settlement Class (herein “Class Counsel”) will be paid a sum sufficient to compensate them for their services in this matter. Class Counsel’s attorneys’ fees/costs, which will at most be \$525,000 for attorneys’ fees and up to \$50,000 in litigation costs, will be paid from the Gross Settlement Amount. Settlement Class Members will not be required to compensate Class Counsel.

A portion of the Gross Settlement Amount (\$200,000) will be allocated to penalties pursuant to California’s Private Attorneys General Act. Of this amount, seventy-five percent (\$150,000) will be paid to the LWDA and twenty-five percent (\$50,000) will be included in the payments to Class Members.

In addition to the payments to Class Counsel and the LWDA, the named plaintiffs (Flouzel Paningbatan and Kuanetta Victoria Todd) may receive a court-approved payment beyond the amounts they would receive as Class Members in this action. The amount of these payments will be determined by the Court in an amount not to exceed \$15,000 each, and the payments will be in compensation for their roles as named plaintiffs prosecuting this lawsuit on the behalf of all Class Members, and also in exchange for a total, general release. Settlement Class Members will not be responsible for this payment – it will come from the settlement fund.

This Notice does not include all details about the action or the settlement. A full copy of the settlement agreement and other public documents filed with the Court with regard to this matter can be inspected and copied by visiting the office of the Clerk of the Court for the Superior Court of California, City and County of San Francisco, Civic Center Courthouse, 400 McAllister Street, San Francisco, California 94102 or using the Court’s website at <https://sfsuperiorcourt.org/online-services>.

6. How Do I Receive Payment Under the Settlement, and How Much Can I Expect to Receive?

You do not need to do anything to be sent your settlement payment. While it remains uncertain when the first settlement check will be sent, it will take time for the settlement to be reviewed and the payments to process, and this will take several months such that the first payments will likely not issue until the early part of 2024. Specifically, while this is an approximation, the present estimate is that the first set of these payments will be sent to those who do not opt out of the settlement on or before [Month, 2023].

Each installment payment will be sent as two separate checks – one check designated as wages from which standard payroll deductions will be withheld and one check for non-wage damages, interest, and penalties from which no payroll deductions will be withheld. You will receive an IRS Form W-2 and 1099, respectively, for the checks.

You will be solely responsible for the reporting and payment of any federal, state, or local income or other tax associated with the checks designated as non-wage damages, interest, and penalties. Defendant will report any payments made pursuant to this agreement to the Internal Revenue Service and other relevant government entities (if any) as required by law.

QUESTIONS? Call [REDACTED]

Defendant and Class Counsel make no representations concerning the tax consequences of this settlement or your participation in it, and you may seek tax advice from a tax professional at your own expense.

The amount of your settlement payments will depend on the number of workweeks that you worked for Defendant as a non-exempt employee in California during the Class Period. The Gross Settlement Amount, less the deductions described in Section 5 of this notice, will be distributed among Class Members who do not opt out in proportion to each Class Member's number of weeks worked during the Class Period. Based upon Defendant's records and the number of weeks you worked, your estimated gross payment will be approximately \$[Amount] from this settlement if it is approved by the Court. This amount will be paid in three installments as noted above.

Once you receive this check, you will have 180 days from issuance of the check to cash it. The payment will be void and no longer collectible after 180 days.

7. What Are My Options With Respect to This Notice?

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice. Defendant has entered into this settlement voluntarily and for the reasons set forth above. As such, and consistent with pertinent law and to the extent you still work for Defendant, your decision to participate in or not participate in this settlement will have no effect on your current employment with Defendant.

A summary of your options is as follows:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you do nothing, you will be electing to participate in the settlement. You will be sent the above-described settlement payments if the settlement is approved by the court, and you will also be subject to the release of claims described in greater detail below.
EXCLUDE YOURSELF OR "OPT OUT"	If you "opt out" of the lawsuit and settlement, and choose not to be part of the settlement and subject to the associated release, you <u>will not</u> receive any payment under this settlement.
OBJECT	You may write an objection to the Court stating why you do not like the settlement. You may also appear in Court and explain why you do not like the settlement or use an attorney to appear for you. You may object to the settlement only if you have <u>not</u> opted out of the class. Submitting an objection does not mean you opt out of the class.

Option 1: Participate in the Settlement. **First**, you may choose to remain a Member of the Class and receive your share of the settlement. To remain a member of the Class and be mailed your share of the settlement following and assuming approval of the settlement by the Court, **you need not take any action**. However, if the address listed on the envelope in which this Notice was sent is not accurate, please provide that information on the Change of Address Form attached to this Notice as Form A, and return the form to the address listed on the form.

Option 2: Opt Out of the Settlement. **Second**, if you do not wish to be part of this settlement, you may elect to “opt out” of the Class and thus exclude yourself from this action and the associated settlement and judgment. Class Members who opt out of this action would remain free, subject to the statute of limitations and applicable statutory, common law, or other restrictions, to bring against Defendant any alleged claims encompassed by this settlement and associated release. Similarly, if you decide to opt out, you will not be allowed to object to this settlement. The deadline to opt out is **[notice response deadline]**. This deadline is final, and forms not postmarked on or before the deadline will not be honored. **If you opt out of the settlement, you will not receive any settlement payments (except for your share of that portion of the settlement allocated to PAGA penalties).**

To elect to opt out of the lawsuit and associated settlement, you must send a letter to the Settlement Administrator that includes (1) your name; (2) the last four (4) digits of the your Social Security Number; (3) your signature; and (4) a statement indicating that you do not wish to participate in the settlement or the following statement: “Please exclude me from the Settlement Class in the *Todd v. Motivate LLC* matter.” The Claims Administrator’s address is:

Atticus Administration, LLC
[ZX]
[Address]
[City, State, Zip]

Option 3: Object to the Settlement. **Third**, and only if you have not submitted a letter stating that you wish to opt out of the settlement, you may submit written objections to the settlement by mailing them to the Settlement Administrator at the above-listed addresses. Any objection must include (1) your name; (2) your address; (3) the last four digits of your Social Security Number; (4) your signature; (5) a statement of whether you plan to appear at the Final Approval Hearing; and (6) the reason(s) for the Objection, along with whatever legal authority, if any, you assert in support of the Objection. The deadline to take such action and mail any objections is **[notice response deadline]**. Late objections and/or objections that do not contain the required information will not be valid. Class Counsel and counsel for Defendant will present these objections to the Court.

You may also participate in this lawsuit at your own expense by obtaining your own attorneys (you will be responsible for any attorney fees or costs incurred as a result of this election).

Finally, once again, please be advised that if you fail to opt out of the settlement, you will remain a Class Member and receive your settlement checks. Whether you cash your checks or not, you shall be deemed to have forever released and discharged the Released Claims as described below in this Section, and you will be subject to the judgment rendered in this action.

If you do not opt out of the settlement, and the settlement is ultimately approved, you shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims.

“Released Claims” means all claims that were or could have been asserted against Defendant or the Released Parties based on the factual allegations in the First Amended Complaint. For the duration of the Class Period, the release includes all claims for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to pay all wages due upon termination or resignation; (4) failure to provide accurate and itemized wage statements; (5) failure to timely pay wages during employment; (6) failure to indemnify for work-related business expenses; (7) failure to pay unused paid vacation time; (8) failure to keep accurate time records, payroll records, or sick leave records; (9) failure to pay employees sick leave or the proper amount of sick leave, or failure to pay sick leave at the proper rate; (10) failure to provide meal or rest breaks; (11) failure to pay meal or rest break premiums or failure to pay meal or rest break premiums at the proper rate; (12) failure to provide compliant Wage Theft Notices; (13) other Labor Code claims; and (14) unfair competition under California Business & Professions Code §17200, *et seq.* arising out of the Labor Code violations referenced in the First Amended Complaint.

The Released Claims include claims under the California Private Attorneys General Act, codified at California Labor Code §2698 *et seq.*, for penalties under the Labor Code provisions alleged in the First Amended Complaint, for which the Class and the State of California are being granted additional consideration, which is already part of, and not in addition to, the Gross Settlement Amount, in the amount of \$200,000, seventy-five percent of which shall be paid to the California Labor and Workforce Development Agency pursuant to the settlement agreement.

Also, California Labor Code §2804 does not affect or impede the release of Released Claims, and it is further agreed that the entry of Judgment in this case will confirm that Labor Code §2804 does not affect or impede this release or the Stipulation as a whole.

8. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court preliminarily approved this settlement on [preliminary approval date]. The Court will hold a final hearing on the fairness of this settlement on [final approval hearing date and time]. This hearing will take place in Department [redacted] of the Superior Court of California, City and County of San Francisco, Civic Center Courthouse, 400 McAllister Street, San Francisco, California 94102. **Attendance at this hearing is completely optional; attendance at the hearing is not required at all, and it is not required to participate in the settlement or opt out of the lawsuit.**

Class Members who have not submitted an opt out letter can express their views on the settlement at or before this hearing, but are not required to do so, nor are you required to attend this hearing to exercise any of your rights, including either the right to remain a Class Member and receive payment, or the right to opt out of this settlement. Class Members can exercise either of these options by following the instructions contained in this Notice; again, **no appearance by you at the hearing is required.**

FORM A
FOR
NOTICE TO CLASS MEMBERS OF PENDING CLASS ACTION
AND NOTICE OF HEARING ON PROPOSED SETTLEMENT

QUESTIONS? Call 

Change of Address Form

Pursuant to Section 4 of the Notice, I hereby wish to change my mailing address on record. For the remainder of this action, including for the mailing of any payment or further notices, I request that the Settlement Administrator use the following address for me:

Name of Class Member (print): _____

Address: _____

City, State and Zip Code: _____

Phone: _____

Date: _____

Signature: _____

For purposes of verification only, provide one of the following:

I started working for Motivate, LLC in: _____, _____.
MONTH YEAR

My Motivate, LLC Employee ID number is: _____

The last four digits of my Social Security Number are: _____

PLEASE RETURN THIS FORM VIA UNITED STATES MAIL TO:

Atticus Administration, LLC

[ZX]

[Address

[City, State, Zip]