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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANDRES GONZALEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

CATALINA CHANNEL EXPRESS, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No. BC707664 (Related to Case No.
BC620021)

CLASS ACTION

*[Assigned for all purposes to the Honorable
Carolyn B. Kuhl, Dept. SSC-12]*

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 21, 2020
Time: 10:30 a.m.
Dept.: SSC-12

Complaint Filed: May 29, 2018
Trial Date: None Set

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I, PAUL K. HAINES, declare as follows:

1. I am the principal of Haines Law Group, APC, and counsel for the named plaintiff Andres Gonzalez (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter against Catalina Channel Express, Inc. (“Catalina” or “Defendant”). I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated *cum laude*. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy, located in Encino, California. I also spent a semester in law school working as an extern for the Honorable Edward Rafeedie, District Judge for the United States District Court for the Central District of California.

3. Since graduating from law school, my practice has focused almost exclusively on employment litigation. In September 2007, I began working as an associate attorney at the international law firm of Littler Mendelson, P.C. at its Los Angeles office, which according to its website is the “largest U.S.-based law firm exclusively devoted to representing management in every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed on wage and hour class actions in both state and federal courts, and I also worked on a number of single and multi-plaintiff wage and hour matters as well.

4. During my employment at Littler Mendelson, I played a significant role in the class actions that I was staffed on, as I was often the only associate staffed on such cases. In particular, I received a wide array of wage and hour class action experience performing the following types of tasks: drafting demurrers, motions to strike, and motions to dismiss; removing actions from state court to federal court; drafting and responding to written discovery; drafting and opposing discovery related motions; arguing discovery related motions; drafting motions to consolidate related matters; interviewing putative class members and obtaining declarations in connection with class certification; drafting oppositions to motions for class certification; drafting

1 motions for decertification following class certification; conducting exposure analyses to assess
2 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification,
3 and potential damages resulting from such claims; drafting mediation briefs; serving as the
4 primary contact to in-house counsel; deposing named plaintiff and putative class members;
5 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
6 short, I played an integral role in all aspects of litigation from the inception of a matter through
7 and beyond class certification. I also supervised the work of several junior attorneys who were
8 staffed on the same wage and hour class actions.

9 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
10 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP at
11 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
12 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
13 actions. For the vast majority of these cases, I was the only associate staffed on the matters, and
14 I performed the same job duties as described in the immediately preceding paragraph. In addition
15 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
16 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
17 Standards Act, as well as California-specific claims under Rule 23 of the Rules of Civil Procedure.

18 6. In July 2012, I transitioned into litigating wage and hour class actions from the
19 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
20 February 2016 as Principal of Haines Law Group, APC. Currently, over ninety percent (90%) of
21 my practice is dedicated exclusively to the prosecution of wage and hour class actions, and my
22 law firm is currently responsible for prosecuting over fifty (50) wage and hour class actions filed
23 in both State and Federal courts throughout California. I have been appointed as Class Counsel
24 in over one hundred (100) wage and hour class action settlements in state and federal courts within
25 California. Some examples of the matters in which I have been appointed as Class Counsel, all
26 of which have been granted final approval, include the following: *Shaw v. Conant Auto Retail*,
27 *San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San
28 Diego, Honorable Judge Joan M. Lewis, presiding; *Tirado v. Ricon Corp.*, Case No. BC537042,

1 California Superior Court, County of Los Angeles, Honorable John S. Wiley, presiding; *Horta v.*
2 *Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of
3 San Bernardino, Honorable Donald Alvarez presiding; *Rodriguez v. Spartan, Inc.*, Case No.
4 BCV-15-100007-DRL, California Superior Court, County of Kern, Honorable David R. Lampe
5 presiding; *Kostyuk, et al. v. Golden State Overnight Delivery Service, Inc.*, Case No.
6 RG14727191, California Superior Court, Alameda County, Honorable Winifred Y. Smith
7 presiding; *Leverage, et al v. Traeger Pellet Grills, LLC, et al*, Case No. 16-cv-00784-KAW,
8 United States District Court for the Northern district of California, Magistrate Judge Kandis
9 Westmore presiding; *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California
10 Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr., presiding;
11 *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of
12 California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding; *Morales v.*
13 *Caremeridian, LLC, et al.*, Case No. BC593191, California Superior Court, County of Los
14 Angeles, Judge William F. Highberger presiding; *Rodrigues v. CP Kelco U.S., Inc.*, Case No. 37-
15 2017-00004339-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge
16 Joel R. Wohlfeil, presiding; *Sandoval v. Rotational Molding, Inc.*, Case No. BC640678, Superior
17 Court of California, County of Los Angeles, Honorable Judge William F. Highberger presiding;
18 *Gooding v. Vita-Mix Corp., et al*, Case No. 2:16-cv-03898-ODW (JEMx), United States District
19 Court for the Central District of California, Honorable Judge Otis D. Wright II presiding; and
20 *Best v. The Gap, Inc.*, Case No. BC717340, Superior Court of California, County of Los Angeles,
21 the Honorable Daniel J. Buckley presiding.

22 7. I have also moved to certify and have received an order certifying a class action
23 and/or conditionally certifying a collective action in the following cases:

- 24 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-
25 CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler,
26 presiding (certifying a class of employees who were misclassified as independent
27 contractors);

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- 1 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United
2 States District Court, Central District of California, Honorable Judge Beverly Reid
3 O’Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 4 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States
5 District Court, Central District of California, Honorable Judge John F. Walter, presiding
6 (certifying rest period class and conditionally certifying FLSA unpaid overtime class);
- 7 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court,
8 Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding
9 (conditionally certifying an unpaid FLSA overtime wage class);
- 10 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States
11 District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding
12 (conditionally certifying an unpaid FLSA overtime wage class);
- 13 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC,
14 California Superior Court, County of Orange, Honorable Judge William Claster, presiding
15 (certifying unpaid overtime wage class and waiting time penalty class);
- 16 • *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC,
17 California Superior Court, County of Orange, Honorable Glenda Sanders, presiding
18 (certifying piece rate pay plan classes, expense reimbursement class, wage statement
19 class, and waiting time penalties class);
- 20 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United
21 States District Court, Central District of California, Honorable Dolly M. Gee presiding
22 (certifying six classes of employees for rest period violations, wage statement violations,
23 meal period violations, and overtime and double-time violations);
- 24 • *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United
25 States District Court, Southern District of California, Honorable William Q. Hayes
26 presiding (certifying six classes of employees for unpaid wages, meal period violations,
27 wage statement violations, and waiting time penalties);

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- *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deduction violations, wage statement violations, and waiting time violations);
- *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIV DS1712267, San Bernardino Superior Court, Honorable David S. Cohn presiding (certifying wage statement class); and
- *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying class of employees for wage statement violations).

8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young Attorney in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an honor awarded to no more than two-and-a-half percent of attorneys under the age of forty in Southern California each year. In 2018, 2019, and 2020, Thomson Reuters recognized me as a “Super Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than five percent of all attorneys in Southern California each year.

9. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately involved in every aspect of this case from its inception through the present, and I believe that the proposed Settlement is an excellent result for the Settlement Class.

10. Catalina operates a fleet of high-end vessels providing transportation to Catalina Island from Long Beach, San Pedro and Dana Point. Plaintiff and Settlement Class members are current and former non-exempt land-based employees (i.e., non-exempt job positions other than Captains, Second Operators, Deckhands, and Cabin Attendants in Vessel Operations) who worked for Catalina between May 29, 2014 and June 16, 2019 (the “Class Period”).

11. On May 29, 2018, Plaintiff filed the instant action, alleging claims for failure to pay minimum and overtime wages, meal period violations, and waiting time penalties. On March 28, 2019, Plaintiff filed a First Amended Complaint in which he excluded sea-based positions from the putative class, as those employees’ claims were resolved by a class action settlement in the related case of *Beard v. Catalina Channel Express, Inc.*, LASC Case No. BC620021. As part

of this Motion, Plaintiff respectfully requests that the Court approve the filing of a Second Amended Complaint (“SAC”) adding causes of action for failure to reimburse necessary business expenditures, wage statement penalties, and PAGA civil penalties. A true and correct copy of the proposed SAC is attached hereto as **Exhibit B**.

12. The parties agreed to attend mediation with the Honorable Peter D. Lichtman (Ret.), an experienced and respected wage and hour class action mediator. In preparation for mediation, the parties engaged in extensive informal discovery, including Catalina’s production of a sample of all timekeeping data and payroll data for putative class members; its relevant written wage and hour policies and other relevant documents; as well as additional data and information that allowed Plaintiff, along with his retained expert with a Ph.D. in economics, to calculate the total number of putative class members, average rates of pay, total workweeks, and additional relevant data points. With the assistance of our retained expert, my office conducted a comprehensive analysis and extrapolation of this discovery to calculate Catalina’s potential classwide exposure. This discovery allowed the parties to assess the merits and value of Plaintiff’s claims, as well as the chances for class certification.

13. The parties attended a full-day mediation on September 23, 2019 with Judge Lichtman. The parties vigorously debated their legal positions, the likelihood of certification of Plaintiff’s claims, and the legal bases for the claims and defenses. With Judge Lichtman’s assistance, the parties eventually agreed to a settlement and over the following months, the parties negotiated and formalized the Stipulation of Settlement (“Settlement”). A true and correct copy of the Settlement is attached hereto as **Exhibit A**. The proposed Class Notice and Estimated Settlement Payment Form are attached as **Exhibits 1 and 2**, respectively, to the Settlement.

14. The monetary terms of the Settlement are set forth below:

• Maximum Settlement Amount (“MSA”):	\$600,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$200,000.00
• Minus Court-approved verified costs (up to):	\$30,000.00
• Minus Court-approved Class Service Award:	\$5,000.00
• Minus Amount Designated as PAGA penalties:	\$30,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$13,000.00</u>
Net Settlement Amount (“NSA”):	\$322,000.00
• PLUS 25% of PAGA penalties to Settlement Class:	\$7,500.00
Total Amount Paid to Settlement Class members:	\$329,500.00

1 15. As noted in the Settlement, Catalina has represented that there are approximately
2 up to 552 Settlement Class members. Accordingly, the estimated average Individual Settlement
3 Payment is projected to be at least \$596.92.

4 16. Plaintiff alleges that Catalina paid Plaintiff and other non-exempt employees non-
5 discretionary performance bonuses, and other forms of non-discretionary pay, but failed to
6 include these payments when calculating employees' "regular rate" when determining overtime
7 compensation. This, Plaintiff asserts, resulted in underpayment of overtime wages. Based on
8 Plaintiff's expert's analysis and extrapolation of payroll data provided by Catalina, Plaintiff
9 calculated that putative class members were underpaid by approximately \$13,856 in overtime
10 during the Class Period as a result of Catalina's alleged failure to calculate the Class Members
11 "regular rate" of pay. Catalina counters that any bonus payments were discretionary and, in any
12 event, were not tied to employees' hours worked, and therefore need not be included in the regular
13 rate. Catalina also argues that differences in frequency, type, and amount of bonuses received by
14 putative class members would preclude class certification. Based on these defenses, Plaintiff
15 discounted the estimated maximum by 20% for risk of non-certification, and by an additional
16 25% to account for risk of losing on the merits or failure to recover the full amount sought, to
17 arrive at an estimated exposure of \$8,314.

18 17. Plaintiff alleged that Catalina pays its employees in quarter-hour increments in a
19 manner than consistently favored Catalina, and that its time-rounding practice has resulted in a
20 systemic underpayment of minimum and overtime wages. However, Catalina countered
21 that it utilized an even-handed system that resulted in most employees being
22 overpaid rather than underpaid. Indeed, Plaintiff's expert's analysis of timekeeping and
23 payroll records revealed that employees were actually *overpaid* an average of 1.9 minutes per
24 shift. Plaintiff's analysis further showed that Catalina's rounding system favored *employees* on
25 approximately 52.76% of all shifts. These analyses led Plaintiff to conclude that he would likely
26 not recover on his rounding claim. Catalina further asserts this claim would not be amenable to
27 class certification due to required individualized inquiries, as Catalina maintains most employees
28 were overpaid due to rounding while others were underpaid. Based on these defenses, and

1 because Plaintiff's analysis reflected a net overpayment to the Settlement Class, Plaintiff
2 determined it would be very difficult to overcome Catalina's defenses and therefore assigned this
3 claim zero value.

4 18. Plaintiff alleges Catalina failed to provide legally compliant meal periods.
5 Specifically, Plaintiff alleges Catalina provides employees with late meal periods (i.e., more than
6 5 hours into the shift), short (less than 30 minutes) and fails to provide second meal periods on
7 shifts over 10.0 hours. Based on Plaintiff's expert's analysis and extrapolation of timekeeping
8 records, a total of approximately 78,600 shifts during the Class Period reflect a potential late first
9 meal period, and/or were over 10.0 hours and thus reflected a potential second meal period
10 violation. Thus, based on the \$15.42 average hourly rate, Plaintiff estimated total maximum
11 damages on this claim as approximately \$1,212,012 ($\$15.42 \times 78,600$ shifts). However, Plaintiff's
12 theory of liability carried significant risks of both non-certification and reduction on the merits.
13 Catalina counters that it has always provided its employees the opportunity to take legally
14 compliant meal periods, and that it is not required to "ensure" meal periods are taken. Any non-
15 compliant meal periods in the timekeeping records were the result of employee choice, Catalina
16 contends, rather than any policy or practice of Catalina. Catalina further contends many
17 employees choose to waive the second meal period under Labor Code § 512(a), to avoid staying
18 at work an extra unpaid 30 minutes. Catalina also asserts it has paid nearly 1,500 meal period
19 premiums during the Class Period, which, Catalina contends, demonstrates its commitment to
20 ensuring meal periods are provided, and paying the appropriate remedy when they are not.
21 Catalina further asserts that employees rarely work shifts over 10.0 hours, and thus any damages
22 for second meal periods would be minimal. Finally, Catalina argues this claim is not suited for
23 class treatment, as individual inquiries would be needed to assess which employees took non-
24 compliant or missed meal periods, how many meal periods were non-compliant or missed, and
25 the reason(s) why a particular employee did not take a meal period on a particular shift. Based on
26 these defenses, Plaintiff discounted the maximum amount by 50% for risk of non-certification
27 and an additional 65% for risk of losing on the merits or failing to recover the full amount sought,
28 to arrive at an estimated exposure of \$303,003.

1 19. Plaintiff alleges that he and other non-exempt employees have been required to
2 use their personal cell phones to maintain communication with management, and that he and some
3 non-exempt employees – specifically, Vessel Engineering and Vessel Engineering Support
4 employees – were occasionally required to use personal vehicles to travel between the Long
5 Beach and San Pedro ports, without reimbursement. In calculating exposure for this claim, and
6 based on his own experience and investigation, Plaintiff assumed an average monthly cell phone
7 bill of approximately \$50 per month, and that approximately 30% of the average employee’s cell
8 phone use, or \$15 per month, was work-related. Plaintiff further estimated, based on records
9 produced by Catalina, that Settlement Class members worked about 10,000 work-months during
10 the Class Period, for a maximum potential of \$150,000 in cell phone expenses. In addition,
11 Plaintiff estimated Vessel Engineering and Vessel Engineering Support employees, who
12 collectively worked about 1,100 work-months during the Class Period, drove up to 24 miles
13 (consisting of two round-trip 6-mile trips between Long Beach and San Pedro) per month. Based
14 on the average IRS mileage rate of about \$.56 during the Class Period, Plaintiff estimated a total
15 of \$14,784 in unreimbursed mileage (24 * \$.56 * 1,100). *Id.* Thus, Plaintiff calculated Catalina’s
16 maximum potential exposure on this claim as approximately \$164,784. However, Catalina
17 counters that it does not require employees to use their personal cell phones, and that there is no
18 legitimate business reason for employees to do so, and that there were alternative means to travel
19 between ports on the rare occasion that was necessary. Catalina further argues that whether an
20 employee is owed reimbursement would turn on the reasonableness of the expense incurred, and
21 individual inquiries would be needed to establish not only whether the employee incurred
22 expenses, how much the expense was, and whether it was reimbursed, but also whether the
23 expenses were “reasonable.” These individual inquiries, which Catalina asserts go to both
24 liability and damages, would preclude class certification. Based on these defenses, Plaintiff
25 discounted the maximum value of this claim by 40% for risk of non-certification, and an
26 additional 50% for risk of losing on the merits or failure to recover the full amount, to arrive at a
27 realistic exposure of \$49,435 on the reimbursement claim.

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1 20. Plaintiff contends that based on the alleged Labor Code violations discussed
2 above, Catalina is liable for waiting time penalties for failure to pay final wages to former
3 employees. The waiting time penalty is calculated by multiplying the former employee's daily
4 wage by the number of days the final wages were unpaid, up to a maximum of 30 days. Based on
5 data provided by Catalina, there are approximately 294 Settlement Class members who have
6 separated their employment with Catalina since May 29, 2015, and the average rate of pay for
7 former employees is \$15.42. Therefore, Plaintiff estimated an average waiting time penalty of
8 \$3,701 ($\$15.42 \times 8 \text{ hours} \times 30 \text{ days}$). Plaintiff thus calculated Catalina's potential maximum
9 waiting time penalty exposure as follows: 294 waiting time class members * \$3,701 avg. waiting
10 time penalty = \$1,088,094. However, Catalina asserts it has strong defenses to the waiting time
11 claim because a good-faith dispute exists as to Plaintiff's underlying claims, precluding
12 imposition of penalties under the relevant case law and regulations. Catalina further contends that
13 Plaintiff's meal period claims cannot support a claim for waiting time penalties under the relevant
14 case law. Moreover, Catalina points out that the same risks as to class certification and the merits
15 that attended Plaintiff's underlying claims, apply equally to the derivative waiting time claim.
16 Thus, Plaintiff discounted Catalina maximum exposure by 50% for risk of non-certification and
17 by an additional 60% for risk of being unsuccessful on the merits, to arrive at an estimated total
18 of \$217,619.

19 21. Plaintiff also alleges that Catalina is liable for wage statement penalties as a result
20 of its underlying alleged Labor Code violations. Plaintiff's expert's analysis of the data produced
21 by Catalina reflected that there were approximately 10,938 bi-weekly pay periods within the one-
22 year liability window under Labor Code § 226. In calculating Catalina's exposure, Plaintiff
23 assumed he could recover the "initial" wage statement penalty of \$50 for each violation, for a
24 total of \$546,900 in potential penalties. Catalina, however, argues that no underlying violations
25 occurred, and thus no wage statement violations occurred, either. Catalina further contends any
26 alleged wage statement violations could not be shown to be "knowing and intentional,"
27 particularly given its good-faith defenses; that Plaintiff cannot show he or other employees
28 "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e);

1 and that wage statements always accurately reflected hours worked and amounts paid to
2 employees. Catalina also argues that meal period violations cannot give rise to wage statement
3 violations under the relevant case law. Based on these defenses, Plaintiff discounted the
4 maximum exposure by 60% for risk of non-certification, and by an additional 65% for risk of
5 being unsuccessful on the merits, for an estimated realistic exposure of \$76,566.

6 22. Plaintiff contends that Catalina is liable for civil penalties under the PAGA as a
7 result of its Labor Code violations discussed above. For this claim, Plaintiff estimated a maximum
8 PAGA exposure of \$437,500, based on 4,375 pay periods during the PAGA Period, multiplied
9 by the \$100 “initial” violation rate under Labor Code § 2699(e)). However, these penalties derive
10 from Plaintiff’s underlying claims, each of which Catalina vigorously disputes. Catalina further
11 maintains that given its good-faith defenses, the Court would utilize its discretion to substantially
12 reduce PAGA civil penalties. In light of these defenses, Plaintiff discounted the maximum figure
13 by 50% for risk of losing on the merits, and by an additional 70% for risk of the Court reducing
14 penalties, to arrive at estimated exposure of \$65,625.

15 23. Using these estimated figures for each of the claims described above, Plaintiff
16 predicted the realistic total recovery for the Settlement Class would be approximately \$720,562.
17 The proposed settlement of \$600,000 therefore represents about 83.3% of Plaintiff’s reasonably
18 forecasted recovery.

19 24. Although the parties engaged in significant informal discovery in connection with
20 mediation, the parties still had not completed formal written and deposition discovery, which
21 would have required expenditure of substantial time and resources. Plaintiff also still had to file
22 for class certification. Even if Plaintiff obtained certification, the parties would incur considerable
23 attorneys’ fees and costs through a possible decertification motion, motions for summary
24 judgment, trial, and potential appeals. This Settlement avoids those risks and accompanying
25 expense.

26 25. At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third of
27 the MSA (estimated at \$200,000), and up to \$30,000 in litigation costs. The requested fee is fair
28 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a

1 purely contingent basis. My office has incurred substantial attorneys' fees conducting pre-filing
2 investigation; analyzing Plaintiff's claims; conducting legal research; analyzing timekeeping,
3 payroll, and other data with Plaintiff's expert to create a comprehensive damages model;
4 preparing for and attending mediation; negotiating and preparing the Settlement; preparing this
5 Motion; and otherwise prosecuting this case. Further, I anticipate that my office will incur
6 significant future attorneys' fees in overseeing the Notice process, fielding phone calls from
7 Settlement Class members, preparing the Final Approval Motion and supporting documents, and
8 appearing at the Final Approval Hearing.

9 26. At final approval, Plaintiff will separately apply for a Class Representative Service
10 Award in the amount of \$5,000. As will be fully briefed at final approval, Plaintiff's requested
11 Award is in recognition of the time and effort he expended on behalf of the Settlement Class,
12 including providing factual information and documents to counsel, identifying potential
13 witnesses, attending in-person and telephonic meetings with counsel to discuss the claims and
14 theories at issue in the litigation, and otherwise actively participating in the prosecution of this
15 case. Plaintiff also undertook the risk of being liable for Catalina's costs if this case were lost,
16 and took on the personal and reputational risks inherent in bringing a class action lawsuit against
17 a former employer.

18 27. I am not aware of any conflicts between Plaintiff or my firm and the Settlement
19 Class which Plaintiff seeks to represent, and Plaintiff's claims are in line with those of the
20 Settlement Class members.

21 I declare under penalty of perjury under the laws of the State of California and the United
22 States that the foregoing is true and correct. Executed on March 26, 2020, at El Segundo,
23 California.



Paul K. Haines

EXHIBIT A

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Andres Gonzalez (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendant Catalina Channel Express, Inc., (“Catalina” or “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines and Sean M. Blakely of Haines Law Group, APC (“Class Counsel”). Defendant is represented by Brigham M. Cheney of Atkinson, Andelson, Loya, Ruud & Romo.

This settlement resolves a lawsuit that was filed by Plaintiff against Catalina in Los Angeles County Superior Court, entitled *Andres Gonzalez v. Catalina Channel Express, Inc.*, Case No. BC707664 (the “Action”). Plaintiff alleges in the Action that Catalina: (a) failed to pay all minimum wages; (b) failed to pay all overtime wages, including but not limited to as a result of the regular rate of pay; (c) failed to provide proper meal periods, or premium pay for non-compliant meal periods; (d) failed to timely pay all wages, including but not limited to wages owing at the time of termination; (e) failed to keep accurate records of hours worked or wages earned or to provide accurate wage statements; (f) failed to reimburse for necessary business expenditures; (g) claims for PAGA civil penalties based on the foregoing Labor Code Violations; and (h) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above.

As part of this Settlement, the parties will stipulate to the filing of a Second Amended Complaint to add causes of action for failure to reimburse for necessary business expenditures, and wage statement penalties and PAGA civil penalties based on the alleged labor code violations addressed above. Plaintiff shall also submit a letter to the Labor Workforce Development Agency (“LWDA”) as required for purposes of exhausting the requirements under PAGA.

Given the uncertainty of litigation, Plaintiff and Catalina wish to settle both individually and on behalf of the Settlement Class (defined below). Accordingly, Plaintiff and Catalina agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Catalina stipulate to certification of the following Settlement Class:

All current and former non-exempt land-based employees (i.e., non-exempt employees working in job positions other than as Captains, Second Operators, Deckhands, and Cabin Attendants in Vessel Operations) who worked for Defendant Catalina Channel Express, Inc. from May 29, 2014 through June 16, 2019 (the “Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in

any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release.** Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Catalina, its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective predecessors and successors in interest, subsidiaries, affiliates, parents, and attorneys (collectively, the “Released Parties”), as follows:

- A. Release by Settlement Class members. Settlement Class members shall release all claims, demands, rights, liabilities, and causes of action that are asserted in the Second Amended Complaint, or that could have been asserted based on the factual allegations in the Second Amended Complaint, that arose during the Class Period (“Released Claims”) with respect to the following claims: (a) failure to pay all minimum wages; (b) failure to pay all overtime wages, including but not limited to as a result of the regular rate of pay; (c) failure to provide proper meal periods, or premium pay for non-compliant meal periods; (d) failure to timely pay all wages, including but not limited to wages owing at the time of termination; (e) failure to keep accurate records of hours worked or wages earned or to provide accurate wage statements; (f) claims for unreimbursed business expenditures (g) claims for PAGA civil penalties based on the foregoing Labor Code Violations; and (h) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above. The Release shall run for the duration of the Class Period.
- B. Release by Plaintiff. In light of the service award that Plaintiff will receive, Plaintiff shall release, in addition to the Released Claims described above, all claims, demands, rights, damages, liabilities, whether known or unknown, pending or contingent, under federal law or state law, applicable orders and regulations, or with any administrative agency against the Released Parties, to the extent permitted by law (“Plaintiff’s Released Claims”). Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.

Specifically excluded from Plaintiff’s Released Claims are any claims for workers’ compensation benefits.

3. **Maximum Settlement Amount** As consideration, Catalina agrees to pay a Maximum Settlement Amount of Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Class Action, Inc. as the “Settlement Administrator” to administer this Settlement.
- B. The Maximum Settlement Amount shall be deposited with the Settlement Administrator into an interest-bearing settlement account for the benefit of the Settlement Class members, within thirty (30) calendar days of the Court entering an order granting final approval, or, solely in the event that there are objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed, or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater Thirteen Thousand Dollars and Zero Cents (\$13,000.00);
 - (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff’s Class Representative Service Award, in recognition of Plaintiff’s general release of claims, contributions to the Action, and his service to the Settlement Class;
 - (4) Up to one-third of the Maximum Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated to be Two Hundred Thousand Dollars and Zero Cents (\$200,000.00)), plus actual costs and expenses incurred by Class Counsel in relation to the Action as supported by declaration, which are currently estimated to be no greater than Thirty Thousand Dollars and Zero Cents (\$30,000.00); and
 - (5) The Parties have set aside Thirty Thousand Dollars and Zero Cents (\$30,000.00) of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or Twenty Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00), will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to certain of the Participating Settlement Class Members as the “PAGA Amount,” as described below.
- D. Catalina agrees to pay the employer’s share of payroll taxes due on the wage portion of the payments to the Settlement Class separately from, and in addition to, the Maximum Settlement Amount. The Settlement Class members are responsible for their share of payroll taxes, which shall be deducted from their individual settlement payments.

- E. Escalator Clause. At the time of mediation, Catalina represents that there were approximately 525 Settlement Class members during the Class Period. If, at the time of preliminary approval, the number of Settlement Class members is more than 5% greater than 525 (i.e., if there are 552 or more Settlement Class members), then Plaintiff has the discretionary option to rescind the Settlement by communicating that decision to both the Settlement Administrator and Catalina in writing. Catalina may preempt Plaintiff's right to rescind by increasing the Maximum Settlement Amount on a proportional basis (i.e., if there was a 12% increase in the number of Settlement Class members, Catalina will increase the Maximum Settlement Amount by 12%).

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative Service Award, the Settlement Administrator's fees and expenses for administration, and the amount set aside as PAGA civil penalties. The remaining amount shall be known as the Net Settlement Amount or "NSA."

- B. The Settlement Administrator will then calculate each Settlement Class member's Individual Settlement Payment based on the following formula:

- i. Payments to all participating Settlement Class members: Seventy-Five percent (75%) of the NSA (the "Wage Claims Amount") will be distributed to all eligible participating Settlement Class members as follows:

1. The Wage Claims Amount will be divided into the following Job Category Sub-Funds, which are calculated based upon the proportion of hours worked and average approximate pay rates paid to Job Categories worked by the Settlement Class members, as shown in the table below:

A	B	C	D	E	F
Job Category	Approximate Average Rate of Pay for Job Category	Approximate Hours Worked During Class Period	Percentage of Total Hours Worked by Job Category (Column C ÷ Column C Total)	Percent Total Hours Multiplied by Approximate Average Pay Rate (Column B x Column D)	Job Category Sub-Fund Percentage (Column E ÷ Column E Total)
Administration	\$17.00	125,444.75	10.28%	\$1.75	10.94%
Central Services	\$14.00	72,776.67	5.96%	\$0.83	5.22%
Food and Beverage	\$14.00	267,979.13	21.95%	\$3.07	19.24%
Reservations	\$15.00	271,763.44	22.26%	\$3.34	20.90%
Ticketing	\$15.00	344,053.58	28.18%	\$4.23	26.46%
Vessel Engineering	\$30.00	85,356.17	6.99%	\$2.10	13.13%

Vessel Engineering Support	\$15.00	53,350.50	4.37%	\$0.66	4.10%
Total	N/A	1,220,724.24	100.00%	\$15.98	100.00%

2. The total amount allocated to each Job Category Sub-Fund will equal the total Wage Claims Amount multiplied by the Job Category Sub-Fund Percentage shown in the table above.
3. For purposes of this Settlement, Class Members are assigned to the Job Category to which they were assigned for the majority of hours worked during the Class Period. However, the hours worked credited to each individual will include all hours worked in any job position within the Settlement Class.
4. Settlement Class members will be eligible to receive a pro rata share of the Job Category Sub-Fund they are assigned to, based on their hours worked during the Class Period, using the following formula:

$$\frac{(\text{Hrs worked credited to individual assigned to sub} - \text{fund})}{(\text{All hours worked for all individuals assigned to sub} - \text{fund})} \times (\text{Total sub} - \text{fund amount})$$

- ii. Waiting Time Amount: Fifteen percent (15%) of the NSA shall be designated as the “Waiting Time Amount.” Each participating Settlement Class member whose employment with Catalina ended at any time from May 29, 2015 through the end of the Class Period (the “Waiting Time Period”) shall receive an equal share of the Waiting Time Amount. In other words, the Waiting Time Amount will be divided equally among all participating Settlement Class members whose employment with Catalina ended during the Waiting Time Period.
- iii. Other Penalty Claims Amount: Ten percent (10%) of the NSA shall be designated as the “Other Penalty Claims Amount.” Each participating Settlement Class member who was employed by Catalina at any time from May 29, 2017 through the end of the Class Period (“Wage Statement/PAGA Period”), shall receive a portion of the Other Penalty Claims Amount proportionate to the number of pay periods worked by that participating Settlement Class member during the time period from May 29, 2017 through the end of the Class Period, and which will be calculated by multiplying 10% of the NSA by a fraction, the numerator of which is the participating Settlement Class member’s number of pay periods worked during the time period from May 29, 2017 through the end of the Class Period, and the denominator of which is the total number of pay periods worked by all participating Settlement Class members during the time period from May 29, 2017 through the end of the Class Period.

- iv. PAGA Amount: In addition to the NSA, \$7,500.00 of the Maximum Settlement Amount has been designated as the “PAGA Amount,” as described above. Each participating Settlement Class member who worked for Catalina in California at any time from February 26, 2019 through June 16, 2019 (“PAGA Period”), shall receive a portion of the PAGA Amount proportionate to the number of pay periods worked by that participating Settlement Class member as a non-exempt employee for Catalina in California during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the participating Settlement Class member’s number of pay periods worked as a non-exempt employee for Catalina in California during PAGA Period, and the denominator of which is the total number of pay periods worked by all participating Settlement Class members as non-exempt employees for Catalina in California during the PAGA Period.
- C. Within seven (7) business days following Catalina’s deposit of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Payment amounts, as well as the amount of the employer’s share of payroll taxes due on the wage portion of the Individual Settlement Payments, and provide the same to Catalina’s counsel and Class Counsel for review and approval. Within ten (10) business days following Catalina’s deposit of the Maximum Settlement Amount with the Settlement Administrator, and following the approval of Catalina’s counsel and Class Counsel of the calculations mentioned herein, the Settlement Administrator will prepare and mail Individual Settlement Payments, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Catalina’s counsel. Catalina shall also remit the employer’s share of payroll taxes within this time frame to the Settlement Administrator, who shall promptly transmit such sum to the appropriate taxing authorities. The Settlement Administrator shall also distribute the Court-approved payments for attorneys’ fees, litigation costs, and the Class Representative Service Award within ten (10) business days of Catalina’s deposit of the Maximum Settlement Amount.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Share shall be allocated as follows: one third (1/3) as wages; and two-thirds (2/3) as penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

- E. Each member of the Settlement Class who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class member to whom the check was issued, until such time that they claim their property.
 - F. Neither Plaintiff nor Class Counsel, nor Catalina or its counsel, shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
5. **Attorneys' Fees and Costs.** Catalina will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be Two Hundred Thousand Dollars and Zero Cents (\$200,000.00), plus actual costs and expenses as supported by declaration, in an amount currently estimated at no more than Thirty Thousand Dollars and Zero Cents (\$30,000.00), from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued IRS Forms 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.
6. **Class Representative Service Award.** Catalina will not object to a request for a Class Representative Service Award of up to Five Thousand Dollars and Zero Cents (\$5,000.00) from the Maximum Settlement Amount for Plaintiff's general release of claims, his time and risks in prosecuting this case, and his service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class member and shall be reported on an IRS Form 1099 by the Settlement Administrator.
7. **Settlement Administrator.** The Parties will request the appointment of Phoenix Class Action, Inc. as Settlement Administrator. Catalina will not object to Plaintiff's seeking permission to pay up to Thirteen Thousand Dollars and Zero Cents (\$13,000.00) from the Maximum Settlement Amount for the Settlement Administrator's services. The Settlement Administrator shall be responsible for sending notices and for calculating Individual Settlement Payments and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount by Class Counsel only after Individual Settlement Payments have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:
 - A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
 - B. Approving the filing of the Second Amended Complaint;
 - C. Appointing Paul K. Haines and Sean M. Blakely of Haines Law Group, APC as Class Counsel;
 - D. Appointing Andres Gonzalez as Class Representative for the Settlement Class;
 - E. Approving Phoenix Class Action, Inc. as Settlement Administrator;
 - F. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
 - G. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and the Notice of Estimated Settlement Award, attached hereto as **Exhibits 1 and 2**, respectively), and directing the mailing of same; and
 - H. Scheduling a Final Approval hearing.
9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:
 - A. Within thirty (30) calendar days after entry of an order preliminarily approving this Settlement Agreement, Catalina will provide the Settlement Administrator with the names, last known addresses, social security numbers, dates of employment during the Class Period, and the number of workweeks worked during the Class Period for all Settlement Class members (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
 - B. Within ten (10) business days from receipt of the Class Data, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the addresses of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; (iv) provide its calculations to Counsel for approval; and (v) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
 - C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail an Exclusion Letter (defined below) to the

Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).

- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the settlement must submit an “Exclusion Letter” by the Response Deadline. The Exclusion Letter is a document prepared by the Settlement Class member that must: (1) contain the Settlement Class member’s name, address, telephone number, and last four digits of his/her Social Security number; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Exclusion Letter does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from this settlement, except an Exclusion Letter not containing a Settlement Class member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Exclusion Letter shall be the exclusive means used to determine whether an Exclusion Letter has been timely submitted. Any Settlement Class member who timely and validly requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement, will not be bound by the terms of the Settlement Agreement, and will not have any right to object, appeal, or comment thereon.
 - ii. If 5% or more of the Settlement Class members elect to opt-out of the Settlement, Catalina maintains the sole right to rescind the Settlement. Catalina must exercise this right of rescission, in writing, to Class Counsel, within thirty (30) calendar days after the Settlement Administrator notifies the Parties of the total number of opt-outs and share of Settlement Proceeds of those opt-outs. If the option to rescind is exercised, then Catalina shall be solely responsible for all costs of the Settlement Administrator accrued to that point.
- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement by submitting a written objection to the Settlement Administrator as explained in the Class Notice. The Settlement Administrator shall, within two (2) business days of receipt, serve any objection(s) as received on Class Counsel and Catalina’s counsel, who shall then promptly file all such objections with the Court. Catalina’s counsel and Class Counsel shall file and serve any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Catalina’s counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any objection must: (1) contain the objecting Settlement Class member’s full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal

bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline.

- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall contain a Notice of Estimated Settlement Award, in which shall be disclosed the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used from Catalina's records in order to calculate the Individual Settlement Payment. Settlement Class members will have the opportunity, should they disagree with Catalina's records regarding the information stated in their Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted, and will make a determination after consulting with the Parties. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Shares under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Share shall be binding upon the Settlement Class member and the Parties.
 - F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Class Member immediately, and in any event within two (2) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Catalina's counsel to provide notice of the proposed settlement.
10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval of the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
 - B. Approving Plaintiff's and Class Counsel's application for attorneys' fees, costs, Class Representative Service Award, LWDA payment, and settlement administration costs; and
 - C. Entering judgment pursuant to California Rule of Court 3.769.
11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If this Agreement becomes null and void, it shall remain protected by California Evidence Code Section 1152.
12. **Non-disclosure and Non-publication.** Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of the Settlement on their website, but may not include the name(s) of any of the Parties, or the case name or case number of the Action.
13. **Tax Liability.** Catalina, Catalina's counsel, Plaintiff and Class Counsel make no representations as to the tax treatment or legal effect of the payments called for herein, and the Plaintiff and the Settlement Class members are not relying on any statement or representation by Catalina, Catalina's counsel, Plaintiff or Class Counsel in this regard. Plaintiff and Settlement Class members understand and agree that Plaintiff and Settlement Class members will be solely responsible for the payment of any taxes and penalties assessed on the payments to them described herein.
14. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.
15. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-

mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Catalina: Brigham M. Cheney of Atkinson, Andelson, Loya, Ruud, & Romo,
20 Pacifica, Suite 1100, Irvine, California 92618;
bcheney@aalrr.com

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 222 N. Sepulveda
Boulevard, Suite 1550, El Segundo, California 90245;
phaines@haineslawgroup.com

16. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.
17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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[SIGNATURES ON FOLLOWING PAGE]

DATED: March 23, 2020

Catalina Channel Express, Inc.

By: [Signature]
: President

DATED: _____, 2020

Andres Gonzalez

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: March 23, 2020

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

By: Brigham M. Cheney (signed electronically)
Brigham M. Cheney
Attorneys for Defendant Catalina Channel
Express, Inc.

DATED: _____, 2020

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff and the Settlement Class

DATED: _____, 2020

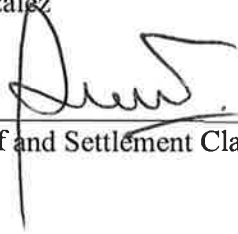
Catalina Channel Express, Inc.

By: _____

: _____

DATED: 03/19/20., 2020

Andres Gonzalez

By:  _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: _____, 2020

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

By: _____
Brigham M. Cheney
Attorneys for Defendant Catalina Channel
Express, Inc.

DATED: _____, 2020

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff and the Settlement Class

DATED: _____, 2020

Catalina Channel Express, Inc.

By: _____

: _____

DATED: _____, 2020

Andres Gonzalez

By: _____

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: _____, 2020

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

By: _____

Brigham M. Cheney

Attorneys for Defendant Catalina Channel
Express, Inc.

DATED: March 26, 2020

HAINES LAW GROUP, APC

By:  _____

Paul K. Haines

Attorneys for Plaintiff and the Settlement Class

EXHIBIT 1

NOTICE OF CLASS ACTION SETTLEMENT
Andres Gonzalez v. Catalina Channel Express, Inc.
Los Angeles County Superior Court Case No.: BC707664

To: All current and former non-exempt land-based employees who worked for Catalina Channel Express, Inc. (“Catalina”) from May 29, 2014 through June 16, 2019.

PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Andres Gonzalez v. Catalina Channel Express, Inc.*, Los Angeles Superior Court Case No. BC707664 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Catalina’s records show that you were employed at Catalina in California as a non-exempt land-based employee (i.e., non-exempt employee working in a job position other than Captain, Second Operator, Deckhand, and Cabin Attendant in Vessel Operations) between May 29, 2014, and June 16, 2019 (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound to the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Andres Gonzalez (“Plaintiff”) brought this Lawsuit against Catalina, seeking to assert claims on behalf of a class of current and former non-exempt land-based employees who worked for Catalina in California at any time between May 29, 2014 and June 16, 2019 (the “Settlement Class”). Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

In the Lawsuit, Plaintiff alleges that Catalina failed to pay Settlement Class members at least the minimum wage for all hours worked, failed to pay all overtime wages owed, failed to provide Settlement Class members with all legally required 30-minute meal periods, and failed to reimburse Settlement Class members for business related expenses. Plaintiff further alleges that Catalina failed to provide Settlement Class members with complete, accurate itemized wage statements and that they failed to pay former Settlement Class members all earned wages at the end of their employment. Because of these alleged violations, Plaintiff contends that Catalina engaged in unlawful business practices and is liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

Catalina denies all of Plaintiff’s allegations and denies that it has done anything wrong. Catalina denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Catalina, which expressly denies all liability.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Catalina, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation. To avoid additional expense, inconvenience, and interference with its business operations, Catalina has concluded that it is in its best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. The Court has not ruled on the merits of Plaintiff's claims. The Court has only determined that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate and reasonable. A final determination on whether the Settlement is fair, adequate and reasonable will be made at the Final Approval hearing.

If you are still employed by Catalina, your decision about whether to participate in the Settlement will not affect your employment. California law and Catalina's policy strictly prohibit unlawful retaliation. Catalina will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff/Settlement Class:	Attorneys for Catalina:
HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Daniel B. Marin-Finn dfinn@haineslawgroup.com 222 N. Sepulveda Blvd., Suite 1550 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	ATKINSON, ANDELSON, LOYA, RUUD & ROMO Brigham M. Cheney bcheney@aalrr.com 20 Pacifica, Suite 1100 Irvine, California 92618 Tel: (949) 453-4260 Fax: (949) 453-4262 www.aalrr.com

What are the terms of the Settlement?

Catalina has agreed to pay \$600,000.00 (the "Maximum Settlement Amount") to fully resolve all claims in the Lawsuit, including payments to participating Settlement Class members, attorneys' fees and expenses, Settlement administration costs, Labor Code Private Attorneys General Act civil penalties, and the Class Representative's Service Award.

The following deductions from the Maximum Settlement Amount will be requested by the parties:

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Maximum Settlement Amount. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount, which is estimated to be \$200,000.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in this

Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$30,000 for verified costs Class Counsel incurred in connection with the Lawsuit.

Settlement Administrator Costs. The Court has approved Phoenix Class Action, Inc. to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Parties will request up to \$13,000 from the Maximum Settlement Amount to pay the settlement administration costs.

Class Representative Service Award. Class Counsel will ask the Court to award the Class Representative a service award in the amount of \$5,000 to compensate him for his service and extra work provided on behalf of the Settlement Class members.

Payment to State of California. The parties have agreed to allocate \$30,000.00 of the Maximum Settlement Amount towards the Settlement of the Labor Code Private Attorneys General Act claims in the Lawsuit. \$22,500 will be paid to the State of California Labor and Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$7,500.00 will be designated as the “PAGA Amount” and allocated to Settlement Class members.

Calculation of Individual Settlement Class Members’ Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion Form (described below). The Net Settlement Amount is estimated at approximately \$329,500.00. First, 75% of the NSA will be designated the “Wage Claims Amount” and shall be distributed to all eligible participating Settlement Class members and will be divided into Job Category Sub-Funds, which are calculated based upon the proportion of hours worked and average approximate pay rates paid to Job Categories worked by the Settlement Class members. Next, 15% of the NSA shall be designated as the “Waiting Time Amount” and will be equally distributed to all Settlement Class members whose employment with Catalina ended at any time from May 29, 2015 through June 16, 2019 (the “Waiting Time Period”). The remaining 10% of the NSA is set aside as the “Other Penalty Claims Amount” and will be distributed to all Settlement Class members who worked for Catalina from May 29, 2017 through June 16, 2019, based on the proportionate number of pay periods worked during that period.

Finally, in addition to the Net Settlement Amount, \$7,500.00 has been designated as the “PAGA Amount” as described above, and will be distributed to Settlement Class members who worked for Catalina at any time between February 26, 2019 and June 16, 2019 (“PAGA Period”), based on the number of proportionate pay periods worked for Catalina during that time period.

Payment of the Settlement. If the Court grants final approval of the Settlement, individual Settlement Payments will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion Letter.

Allocation and Taxes. For tax purposes, each Settlement Payment will be treated as one-third (1/3) “wages,” for which an IRS form W-2 will be issued; and two-thirds (2/3) penalties and interest, for which an IRS form 1099 will be issued. Settlement Class members are responsible for the proper income tax treatment of the individual Settlement Payments. The Settlement Administrator, Catalina and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, each Settlement Class member who has not submitted a valid Request for Exclusion, will release and discharge Catalina, its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective predecessors and successors in interest, subsidiaries, affiliates, parents, and attorneys (collectively, the “Released Parties”), from any and claims, demands, rights, liabilities, and causes of action that are asserted in the Second Amended Complaint, or that could have been asserted based on the factual allegations in the Second Amended Complaint, that arose during the Class Period (“Released Claims”) with respect to the following claims: (a) failure to pay all minimum wages; (b) failure to pay all overtime wages, including but not limited to as a result of the regular rate of pay; (c) failure to provide proper meal periods, or premium pay for non-compliant meal periods; (d) failure to timely pay all wages, including but not limited to wages owing at the time of termination; (e) failure to keep accurate records of hours worked or wages earned or to provide accurate wage statements; (f) claims for unreimbursed business expenditures (g) claims for PAGA civil penalties based on the foregoing Labor Code Violations; and (h) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above. The Release shall run for the duration of the Class Period.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of hours you worked and which job category you fall under for Catalina as a non-exempt land-based employee during the Class Period, the proportionate number of pay periods you worked for Catalina between May 29, 2017 and June 16, 2019, whether your employment with Catalina ended at any time between May 29, 2015 through June 16, 2019, and the proportionate number of pay periods you worked between February 26, 2019 through June 19, 2019. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in this Notice of Settlement. As stated above, your estimated Settlement Payment is based on the proportionate number of hours you worked and which job category you fall under for Catalina as a non-exempt land-based employee during the Class Period, the proportionate number of pay periods you worked for Catalina between May 29, 2017 and June 16, 2019, whether your employment with Catalina ended at any time between May 29, 2015 through June 16, 2019, and the proportionate number of pay periods you worked between February 26, 2019 through June 19, 2019. The information contained in Catalina’s records regarding each of these factors, along with your estimated Individual Settlement Payment, is listed on the accompanying Estimated Settlement Payment Form. If you disagree with the information listed on the Estimated Settlement Payment Form, you may submit a dispute, along with any supporting documentation, to <<ADMINISTRATOR CONTACT INFO>>. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Settlement Administrator will determine whether any adjustments are warranted, and if so, will consult with the Parties and make any adjustments approved by the Parties. The Settlement Administrator’s determination as to the amount of any Settlement Payment will be final and binding.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator an executed Request for Exclusion

Letter postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion Letter shall clearly state that you wish to be excluded from the Settlement.

Send the Request for Exclusion Letter directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion Letter shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member and shall be barred from participating in any portion of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may submit a written objection by directly sending it to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Your written objection must include your name, address, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Written objections must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 12 of the Los Angeles County Superior Court, located at 312 N Spring St, Los Angeles, CA 90012. You have the right to appear either in person or through your own attorney at this hearing, although you do not need to appear at the Final Approval Hearing for your objection to be considered. All objections or other correspondence must state the name and number of the case, which is *Andres Gonzalez v. Catalina Channel Express, Inc.*, Los Angeles Superior Court Case No. BC707664.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 12 of the Los Angeles County Superior Court, located at 312 N Spring St, Los Angeles, CA 90012. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the service award to the Class Representative. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 312 N Spring St, Los Angeles, CA 90012, during regular court hours. You may also view the case file online at www.lacourt.org by going to the "Online Services" tab, selecting "Civil, Case Access," and entering the case number information. This case is assigned to Department 12 of the Los Angeles Superior Court, located at 312 N Spring St, Los Angeles, CA 90012. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, CATALINA, OR ITS ATTORNEYS FOR
INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

REMINDER AS TO TIME LIMITS

The deadline for submitting an Exclusion Letter, Dispute or Objection is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM DATE>>.

EXHIBIT 2

ESTIMATED SETTLEMENT PAYMENT FORM

CATALINA EXPRESS LITIGATION

Your estimated individual settlement payment of the settlement in this case is \$«MERGED_TotalEstSettAmnt_CALC». This estimate is based on the information detailed below.

If you accept the information used to calculate your estimated individual settlement payment, as set forth below, you do not need to do anything to receive your payment. If you are a "Settlement Class Member" and if believe that any of the information below is inaccurate, you can complete this form and return it to the Settlement Administrator to dispute the information.

«Barcode»
«BarcodeString»
SIMID «SIMID»
«FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

MAIL OR FAX ANY DISPUTES OR ADDRESS UPDATES TO:

Gonzalez v. Catalina Channel Express
c/o: Administrator
P.O. Box 7208
Orange, CA 92799

Important:

1. It is strongly recommended that you keep proof of timely mailing and/or faxing for your records until receipt of your settlement payment.
2. If you change your mailing address, please send your new mailing address to the Settlement Administrator. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

Your Contact Information.

The Settlement Administrator is using the following contact information above for you. If any of your contact information is inaccurate, please correct that information and return a copy of this form to the Settlement Administrator at the address above.

Name

Address

City, State, Zip

(_____)_____-_____
Home Telephone Number

(_____)_____-_____
Cellular Telephone Number

Your Estimated Individual Settlement Payment

Your estimated individual settlement payment is currently \$«MERGED_TotalEstSettAmnt_CALC», based on the information detailed below. This amount is subject to change, either more or less, depending upon the number of challenges to estimated amounts from Settlement Class Members, the outcome of those challenges, the number of Settlement Class Members who opt out, and other possible factors.

Catalina Express' records show that you worked as a non-exempt land-based employee other than a Captain, Second Operator, Deckhand, or Cabin Attendant in Vessel Operations, at some time between May 29, 2014 and June 16, 2019.

As such you are classified for this settlement as:

«MERGED_WCA» Wage Claims Amount Class Member

«MERGED_WTA» Waiting Time Amount Class Member

«MERGED_WSA» Wage Statement Amount Class Member

«MERGED_PA» PAGA Amount Class Member

Catalina Express's records show that during the period of May 29, 2014 through June 16, 2016, you worked «MERGED_HourUnits» hours and your Job Classification for purposes of this Settlement (i.e., the Job Classification in which you were assigned the majority of your hours worked during this time period) is «MERGED_JobPosition». You also <<ENDED/ DID NOT END>> your employment with Catalina between May 29, 2015 and June 16, 2019. You also worked a total of «MERGED_WAGE STATEMENT PayPeriods» Pay Periods between May 29, 2017 and June 16, 2019, and worked a total of «MERGED_PAGAPayPeriods» Pay Periods between February 26, 2019 and June 16, 2019.

Based upon the estimated share for each compensable hour, rate applicable to your Job Classification, Waiting Time Payment, Wage Statement Payment and PAGA payment (if any), your individual settlement payment is currently estimated at \$«MERGED_TotalEstSettAmnt_CALC».

Dispute Procedure

If you are a Settlement Class Member and think there is a mistake with either (1) your number of hours worked, or (2) your Job Classification, check one (or both) of the boxes below and complete the remainder of this form. You do NOT have to submit this form if the Job Classification and hours listed above are accurate.

All fields must be complete for your dispute to be accepted. **Any disputes must be post-marked by no later than <<RESPONSE DEADLINE>>.** Disputes submitted after this date will not be accepted.

- ☐ I wish to dispute the number of hours worked during the dates listed above. I have included a written statement of what I believe to be my correct hours worked with Catalina Express from May 29, 2014 to June 16, 2019.
- ☐ I wish to dispute the “Job Classification” listed above. From May 29, 2014 to June 16, 2019, I worked the majority of my shifts as an Administration / Central Services / Food and Beverage / Reservations / Ticketing / Vessel Engineering / Vessel Engineering Support (Circle One) and this position should be my Job Classification for this settlement.
- ☐ I wish to dispute the number of pay periods worked during May 29, 2017 and June 16, 2019. I have included a written statement of what I believe to be my correct pay periods worked with Catalina Express from May 29, 2017 and June 16, 2019.
- ☐ I wish to dispute the number of pay periods worked during February 26, 2019 and June 16, 2019. I have included a written statement of what I believe to be my correct pay periods worked with Catalina Express from February 26, 2019 and June 16, 2019.

I have also included information and/or documentary evidence that supports my dispute. I understand that, by submitting this dispute, I authorize the Settlement Administrator to review Catalina Express’s records and determine the validity of my dispute.

Signature

Statement of reasons and documentation of dates of employment according to Settlement Class Member:

[please attach documentation and use separate page(s) as necessary]

EXHIBIT B

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANDRES GONZALEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

CATALINA CHANNEL EXPRESS, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No.: BC707664 (Related to Case No.
620021)

*[Assigned for all purposes to the Hon.
Carolyn B. Kuhl]*

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY MINIMUM
WAGES (LABOR CODE §§
1182.12, 1194, 1194.2, 1197);**
- (2) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (5) WAGE STATEMENT PENALTIES
(LABOR CODE § 226 *et seq.*);**
- (6) FAILURE TO KEEP ADEQUATE
RECORDS (LABOR CODE §
1174(d));**
- (7) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200 *et seq.*);**
- (8) FAILURE TO REIMBURSE
EMPLOYEES FOR NECESSARY
BUSINESS EXPENDITURES
(LABOR CODE §§ 2802, 2804); and**

**(9) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Andres Gonzalez (hereinafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this Second Amended Class and Representative Action
3 Complaint (“Complaint”) against Catalina Channel Express, Inc., a California Corporation, and
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1174(d),
10 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804, and Industrial Welfare
11 Commission Wage Order 9 (“Wage Order 9”), in addition to seeking declaratory relief and
12 restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This
13 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
14 amount in controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business,
19 have an agent or agents within the County of Los Angeles, and/or otherwise are found within the
20 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
21 service of process.

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was and currently is, a California resident. During the four years immediately preceding
25 the filing of this action and within the statute of limitations periods applicable to each cause of
26 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
27 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
28 and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226

et seq., 226.7, 510, 512, 516, 558, 1182.12, 1174(d), 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804, California Business and Professions Code § 17200 *et seq.*; and Wage Order 9, which sets employment standards for the transportation industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this action and continuing to the present, Defendants did (and continue to do) business by operating parking facilities, and employed Plaintiff and other, similarly-situated non-exempt employees within Los Angeles County and the State of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 14) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Plaintiff

1 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of
2 the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants operate a fleet of high end and high-speed vessels providing
5 transportation to and from Catalina Island from Long Beach, San Pedro and Dana Point.
6 According to Defendants' website, each year, more than one million passengers set sail on board
7 the Catalina Express fleet. Plaintiff worked for Defendants as a non-exempt employee in a
8 maintenance position, until his termination in or about January 2017.

9 10. During Plaintiff's employment, Plaintiff was required to clock in and out for
10 periods of work, and although Defendants recorded Plaintiff's hours worked to the minute,
11 Defendants only paid Plaintiff in quarter of an hour increments. Defendants' rounding of time to
12 the quarter of an hour was not even-handed, and has resulted in Plaintiff and putative class
13 members not being compensated for all hours worked.

14 11. Defendants also paid Plaintiff and putative class members performance bonuses,
15 and other forms of non-discretionary pay that must be included in the regular rate of pay
16 ("Incentive Pay"). However, Defendants failed to properly calculate Plaintiff's regular rate of
17 pay for overtime purposes as a result of Plaintiff's receipt of Incentive Pay. Instead, Plaintiff was
18 paid less than one and one half times (or two times in the case of double-time hours) the legal
19 regular rate of pay for all overtime hours worked.

20 12. Defendants also failed to provide Plaintiff and other non-exempt employees with
21 all statutorily-mandated meal periods due to Defendants' meal period policies/practices, which
22 systematically result in late (commencing after the fifth hour of work), short (less than 30
23 minutes), and missed first and second meal periods. In those instances that Defendants failed to
24 provide Plaintiff with a legally compliant meal period, Defendants never paid Plaintiff the meal
25 period premium payment required by Labor Code section 226.7. Upon information and belief,
26 Defendants maintained no mechanism for the payment of meal period premium payments as
27 required by Labor Code section 226.7, when they failed to provide Plaintiff and the putative class
28 members with legally compliant meal periods.

13. As a result of Defendants' failure to pay all overtime wages, as well as meal period premium wages, Defendants failed to pay all wages owed to Plaintiff upon his separation of employment with Defendants.

14. As a result of Defendants' failure to pay overtime wages, as well as meal period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

15. During Plaintiff's employment with Defendants' Defendants failed to reimburse Plaintiff for all reasonable and necessary work expenditures, including the use of their personal cellular phones for a variety of work activities and use of their personal vehicles in the performance of their work duties.

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who worked in a position other than Captain, Second Operator, Deckhand, or Cabin Attendant, and had their timekeeping entries rounded, during the four years immediately preceding the filing of this action through the present.

b. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who worked in a position other than Captain, Second Operator, Deckhand, or Cabin Attendant, and: (i) had their timekeeping entries rounded, and/or (ii) earned Incentive Pay and worked overtime hours during a corresponding time period, during the four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked in a position other than Captain, Second Operator, Deckhand, or Cabin Attendant, and who worked a shift greater than 5.0 hours, during the four years immediately preceding the filing of this action

through the present.

d. The Waiting Time Class consists of all formerly employed members of the Minimum Wage Class, Overtime Class, and/or Meal Period Class, and who separated their employment from Defendants in the three years immediately preceding the filing of this action through the present.

e. The Recordkeeping Class consists of all members of the Overtime Class and/or Meal or Rest Period Classes who received a wage statement during the one year immediately preceding the filing of the Complaint through the present.

f. The Wage Statement Class consists of: (i) all members of the Overtime Class and/or Meal Period Class who received a wage statement, during the one year immediately preceding the filing of the Complaint through the present.

g. The Employee Expenses Class consists of all Defendants' current and former non-exempt employees in California who used their personal cellular phones and/or personal vehicles for business purposes, during the four years immediately preceding the filing of the Complaint through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of each of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants authorized and permitted all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring overtime work and not paying for said

work according to the overtime laws of the State of California; and

iii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of their separation of employment were lawful.

iv. Whether Defendants kept adequate records and/or furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226 and 1174(d).

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was deprived overtime wages, was not provided all meal periods, did not receive accurate, itemized wage statements, and did not receive all final wages owed to him upon his separation of employment with Defendants.

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in

California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24. Wage Order 9, § 4 and Labor Code §§ 1182.12 and 1197 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor

Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

25. At all times relevant herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes, but is not limited to, regularly, systematically, and impermissibly failing to properly compensate Plaintiff for all hours worked at the required minimum wage.

26. Defendants' policy and practice of not paying all minimum wages violates Labor Code §§ 204, 558, 1182.12, 1194, 1197, 1198, and Wage Order 9.

27. Defendants' conduct, as alleged herein, is unlawful and creates an entitlement to recovery by Plaintiff in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to Labor Code §§ 204, 210, 558, 1194 and 1198, Wage Order 9, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

29. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

30. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of eight hours per workday and/or in excess of forty hours of work

1 in the workweek. Wage Order 9, § 3 also requires an employer to pay an employee double the
2 employee's regular rate of pay for work in excess of twelve hours each work day and/or for work
3 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
4 caused Plaintiff to work overtime hours but did not compensate Plaintiff or members of the
5 Overtime Pay Class at one and one half times their regular rate of pay for such hours.

6 31. Defendants' policy/practice of requiring overtime work and not paying at the
7 proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558,
8 1194, and 1198; and Wage Order 9.

9 32. The foregoing policies/practices alleged herein are unlawful and create entitlement
10 to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
11 amount of overtime wages, including interest thereon, statutory penalties, civil penalties,
12 attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558,
13 1194, and 1198; and Code of Civil Procedure § 1021.5.

14 **THIRD CAUSE OF ACTION**

15 **MEAL PERIOD VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

17 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 34. Defendants failed to provide Plaintiff and members of the Meal Period Class with
19 proper meal periods in accordance with the mandates of the California Labor Code and the IWC
20 Wage Order. As such, Defendants are responsible for paying premium compensation for meal
21 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and the IWC Wage Order.

22 35. Plaintiff is informed and believes that Defendants maintained a policy and/or
23 practice of failing to pay meal period premiums at the employee's regular rate of pay, despite
24 Plaintiff not being provided with a legally compliant meal period. As a result, Plaintiff is owed
25 unpaid wages per California Labor Code §§ 204, 210 and 558 and meal period premium payments
26 per California Labor Code § 512 and 226.7, including interest thereon, statutory penalties, civil
27 penalties, reasonable attorney's fees, and costs of suit.

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

4 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 37. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
6 an employer to pay all wages immediately at the time of separation of employment in the event
7 the employer discharges the employee or the employee provides at least 72 hours of notice of
8 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
9 to quit, said employee's wages become due and payable not later than 72 hours upon said
10 employee's last date of employment.

11 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due
13 to them at their separation from employment, including all overtime wages, and meal period
14 premium wages.

15 39. Plaintiff is informed and believes, and based thereon alleges, that as a matter of
16 uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the
17 Waiting Time Penalty Class all earned wages at the end of employment in a timely manner
18 pursuant to the requirements of Labor Code §§ 201-203.

19 40. Defendants' failure to pay all final wages was willful within the meaning of Labor
20 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
21 Time Penalty Class their earned wages upon separation from employment results in a continued
22 payment of wages up to thirty days from the time the wages were due.

23 41. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled
24 to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

25 **FIFTH CAUSE OF ACTION**

26 **WAGE STATEMENT VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

28 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

43. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate wage statements with respect to their total gross wages earned, total net wages earned, meal period premium wages earned, and the applicable hourly rates in effect during the pay period, in violation of Labor Code § 226 et seq. Defendants' wage statements are also facially deficient as they do list the correct legal entity that is the employer.

44. Defendants' failure in furnishing Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all earned overtime wages and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

45. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 et seq.

SIXTH CAUSE OF ACTION

FAILURE TO KEEP ADEQUATE RECORDS

(AGAINST ALL DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

47. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the facilities or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees at the respective facilities or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years.

48. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other class members.

1 49. As a result of Defendants' violation of California Labor Code section 1174(d),
2 Plaintiff and the members of the Recordkeeping Class have suffered injury and damage to their
3 statutorily-protected rights. Specifically, Plaintiff and the members of the Recordkeeping Class
4 have been injured by Defendants' intentional and willful violation of California Labor Code
5 section 1174(d) because they were denied both their legal right and protected interest, in having
6 available, accurate and complete payroll records pursuant to California Labor Code section
7 1174(d).

8 **SEVENTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(AGAINST ALL DEFENDANTS)**

11 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 51. Defendants have engaged and continue to engage in unfair and/or unlawful
13 business practices in California in violation of Business and Professions Code § 17200 et seq., by
14 failing to properly pay all minimum and overtime wages, failing provide all required meal periods,
15 and failing to timely pay all final wages to employees upon separation of employment. The acts
16 complained of herein occurred within the last four years immediately preceding the filing of this
17 action.

18 52. Defendants' utilization of these unfair and/or unlawful business practices deprived
19 Plaintiff and continues to deprive members of the Classes of compensation to which they are
20 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
21 over Defendants' competitors who have been and/or are currently employing workers and
22 attempting to do so in honest compliance with applicable wage and hour laws.

23 53. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
24 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
25 monies, as necessary and according to proof, to restore any and all monies withheld, acquired,
26 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

27 54. Plaintiff was compelled to retain the services of counsel to file this court action to
28 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf

1 of Defendants' current non-exempt employees, and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
3 which he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE EMPLOYEES FOR NECESSARY BUSINESS**

6 **EXPENDITURES**

7 **(AGAINST ALL DEFENDANTS)**

8 51. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
9 fully set forth herein.

10 52. As alleged herein, Defendants failed to reimburse Plaintiff and members of the
11 Employee Expense Class for all reasonable and necessary business expenditures, including but
12 not limited to use of their personal cellular phones and/or personal vehicles for business-related
13 purposes.

14 53. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
15 states that "an employer shall indemnify his or her employees for all necessary expenditures or
16 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
17 his or obedience to the directions of the employer."

18 54. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
19 states that "any contract or agreement, express or implied, made by any employee to waive the
20 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
21 employee or his personal representative of any right or remedy to which he is entitled under the
22 laws of this State."

23 55. As a proximate result of Defendants' policies and/or practices in violation of Labor
24 Code §§ 2802, 2804, and Wage Order 1-2001, § 9, Plaintiff and the members of the Employee
25 Expense Class were damaged in sums, which will be shown according to proof.

26 56. Plaintiff and members of the Employee Expense Class are entitled to attorneys'
27 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

28 57. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,

1 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
2 from the date on which they incurred the necessary expenditure.

3 **NINTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **(AGAINST ALL DEFENDANTS)**

6 58. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
7 fully set forth herein.

8 59. Defendants have committed several Labor Code violations against Plaintiff,
9 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within
10 the meaning of Labor Code § 2698 *et seq.* (“PAGA”), acting on behalf of himself and other
11 aggrieved employees, brings this representative action against Defendants to recover the civil
12 penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of
13 California according to proof, pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but
14 not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200
15 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
16 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
17 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
18 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
19 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
20 initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor
21 Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200
22 for each subsequent violation per employee per pay period for those violations of the Labor Code
23 for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 24 a. Failing to Compensate Plaintiff and other aggrieved employees all minimum
25 wages earned in violation of Labor Code §§ 1182.13, 1194, 1194.2, and 1197;
26 b. Failing to compensate Plaintiff and other aggrieved employees all overtime
27 wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
28

- c. Failing to provide Plaintiff and other aggrieved employees with their statutorily mandated meal periods and failing to pay meal period premiums in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to furnish Plaintiff and other aggrieved employees with complete and accurate itemized wage statements in violation of Labor Code § 226;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary business expenses in violation of Labor Code §§ 2802 and 2804;
- f. Failing to timely pay all final wages and compensation earned by Plaintiff, and other aggrieved employees at the time of separation of employment in violation of Labor Code §§ 201-203;
- g. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

60. On or around February 26, 2020, Plaintiff notified Defendant via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under the PAGA with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the PAGA with respect to these violations.

61. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§1182.13, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 201-203;
8. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant to Labor Code § 226 *et seq.*;
9. Upon the Sixth Cause of Action, for statutory recordkeeping penalties based upon violation of Labor Code § 1174(d);
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business & Professions Code § 17200 *et seq.*;
11. Upon the Seventh Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 2802 and 2804;
12. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: 1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial

1 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
2 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
3 violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or
4 (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per
5 pay period for those violations of the Labor Code for which no civil penalty is specifically
6 provided, based on the violations of Labor Code sections cited in Paragraph 59 (a)-(h) above.;

7 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
8 Code § 218.6 and Civil Code §§ 3287 and 3289;

9 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
10 §§226, 1194 *et seq.*, 2699, 2802(c), and Code of Civil Procedure § 1021.5; and

11 15. For such other and further relief the Court may deem just and proper.

12
13 Dated: March 26, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

14
15 By:



Paul K. Haines
Attorneys for Plaintiff

16
17
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

20
21 Dated: March 26, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

22
23 By:



Paul K. Haines
Attorneys for Plaintiff